UNIVERSITY OF SOUTHERN QUEENSLAND

A N A N A L Y S I S O F U N F A I R D I S M I S S A L G R I E V A N C E A R B I T R A T I O N I N A U S T R A L I A

A Dissertation submitted by

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ABSTRACT

This study identifies statistically significant associations between unfair dismissal arbitration decisions and inherent characteristics pertaining to the unfair dismissal claims. The inherent characteristics examined are the industry sector in which the employee worked, the occupational skill level of the employee's position, size of the business, presence of human resource expertise within the business, the reason for dismissal, and the genders of both the employee and arbitrator. This research contributes to the body of knowledge on grievance activity within the workplace. It focuses specifically on arbitrated grievances and as such, AIRC unfair dismissal decisions are investigated as an exemplar of arbitrated grievance activity. This study is within an Australian context which may limit its world-wide generalisability but its strength is that it addresses across industry and across occupational data.

Empirical analysis is undertaken using data collected from unfair dismissal arbitration decisions made by the AIRC during 2004 and 2005. Three hundred and eighty-four (384) cases are analysed, with 34.4% of the arbitration findings occurring in the grievant's favour and 65.6% in the employer's favour. It is noted that this figure is inflated in the employer's favour because it includes cases lodged and later rejected by the commission for jurisdictional reasons. The split counting the 274 *within* jurisdiction cases is 51.8% in the employer's favour and 48.2% in the grievant's favour. The results of chi-square tests indicate that six characteristics have statistically significant association with the arbitration outcome. These characteristics are: occupational skill level of the grievant; the size of the business; the presence of HR expertise; the reason dismissed; the grievant's gender; and the arbitrator's gender. No association was found between the industry sector and arbitration decision, although there is a significant association between industry sector and jurisdictionally rejected claims.

The collective finding of the hypotheses tests suggests that the type of aggrieved employee associated with a favourable arbitration outcome is one from an organisation of between 50 and 100 employees without an HR expert, working in a lower skilled occupation, having been made redundant, is female and appears before a male arbitrator. Whereas, the type of employer associated with a favourable arbitration outcome is one who has either up to 50 staff, or over 200 staff with an HR expert, who dismissed a male employee working in a higher skilled occupation for serious misconduct with the case before a female arbitrator.

A major policy implication of this research relates to the Rudd government's proposed legislative reforms of the unfair dismissal provisions. This study identifies disadvantaged groups of workers when it comes to dismissal practices of employers, namely employees from businesses of 50 to 100 workers and lower skilled workers. Identified also was the need for training for businesses to enable them to engage in procedurally fair redundancy processes and for gender bias awareness for arbitrators. In terms of further research, this study provides the foundation for predictive statistical analysis. The variables suitable for further analysis are occupational skill level, business size, reason for dismissal and gender in relation to their influence on the arbitration outcome. Additional descriptive research could also be conducted in terms of conducting international comparatives with a view to identifying the outputs that different legislation/arbitration frameworks produce for workers and employers.

CERTIFICATE OF DISSERTATION

I certify that the ideas, results, analyses and conclusions reported in this dissertation are entirely my own effort, except where otherwise acknowledged. I also certify that the work is original and has not been previously submitted for any other award, except where otherwise acknowledged.

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Signature of Candidate Date

ENDORSEMENT

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Signature of Supervisor Date

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PAPERS PUBLISHED
AS PART OF RESEARCH AND THESIS PREPARATION

Southey, K 2007, 'The Achilles' Heel of Unfair Dismissal Arbitration in Australian SMEs', paper presented to International Entrepreneurship - 30th Institute for Small Business & Entrepreneurship Conference, Glasgow, Scotland, 7-9 November.

Southey, K 2005, 'A Preliminary Investigation into Unfair Dismissal Decisions in the AIRC', paper presented to 9th Annual Waikato Management School Student Research Conference, University of Waikato, Hamilton, New Zealand, 25 October.

CHAPTER 1

INTRODUCTION AND OVERVIEW OF THESIS

1.0 Introduction

This thesis documents research pertaining to unfair dismissal grievance claims settled by the Australian federal arbitration system. Its aim is to discover if either the aggrieved employee or the employer is more likely to have a favourable or unfavourable finding based on a selection of characteristics (or variables) pertaining to the case. To address this query, this study focuses on the following variables. First, whether the type of industry, size of the firm in which the employment relationship occurred and presence of human resource (HR) expertise is associated with a positive or negative arbitration outcome. Second, it will address whether the skill requirements of the employee's occupation bears association with the arbitration outcome. Third, the reason the employee was given for dismissal is explored to determine whether there is a possible association between this and a positive or negative arbitration outcome. Finally, gender characteristics of both aggrieved employee and arbitrator are considered in terms of whether these characteristics are associated with arbitration decisions.

This study contributes to the accumulation of knowledge acquired by researchers in the quest to describe and explain the phenomenon of employee workplace grievances. Previous studies have been conducted to determine characteristics and determinants of grievance activity which have been investigated in key pieces of research conducted previously by: Bemmels (1990, 1991); Cappelli and Chauvin (1991); Chelliah and D'Netto (2006); Earnshaw, Marchington and Goodman (2000);

Klass (1989); Klass and Dell'omo (1997); Knight and Latreille (2001); and Saridakis et al. (2006). The contribution of these studies to understanding workplace grievance activity is discussed in more detail in the literature review and discussion of results.

This study occurs in response to the suggestion that research into decision making in *grievance arbitration* is limited, including whether there are case characteristics that will produce different results (Klass, Mohony & Wheeler 2005, p. 26). Thus the exemplar of 'arbitrated' grievances used to provide the empirical evidence for this research is drawn from the arbitration decisions of the Australian Industrial Relations Commission (AIRC) where government appointed commissioners determine employee initiated claims of unfair dismissal by their employers.

This chapter will discuss the conceptual context of this study and the rationale for undertaking this research, unveil the research objective with its supporting research questions, and explain key definitions and concepts. After which, a précis of the practical aspects of this study involving an overview of the research methodology, a discussion on the scope of the research and an outline of the thesis structure will finalise the first chapter.

1.1 Unfair Dismissal and Workplace Grievances: The Conceptual Link

Unfair dismissals fall within the scope of the workplace grievance phenomenon because unfair dismissal occurs frequently at the junction of two human resource management practices: discipline and grievance. Discipline and grievance, it is suggested, account for a high majority of industrial relations matters in the workplace and before tribunals (Earnshaw, Marchington & Goodman 2000; Hook et al. 1996)

Workplace discipline is defined by Hook et al. (1996, p. 21) as *'some action taken against an individual who fails to conform to the rules of an organization of which he is a member'*. This means disciplinary action is initiated by the employer where, for example, the employer might furnish a tardy employee with written advice to improve their performance, or dismiss their services altogether for serious breaches of workplace rules.

Grievances are initiated by employees as individuals, collectively, or by union representatives to protest legitimately any aspect of their employment relationship in which they believe management has acted inappropriately (Nurse & Devonish 2007). Formal grievance mechanisms generally include a right of appeal throughout each stage of the process to the extent to where the employee can seek arbitration from a third party. Arbitration is the final avenue for resolving a dispute after the failure of mediation or conciliation processes (Bemmels 1990). These third parties exist in the form of courts, industrial tribunals, commissions or government identified advisory bodies, with authority to determine whether a fair process was administered by the employer in processing the discipline and/or dismissal (Rollinson et al. 1996).

The unfair dismissal nexus occurs when the disciplinary process has induced the need to terminate the employee's contract and the employee invokes a grievance. This occurs outside the organisation's formal grievance procedures, because the ex-employee now exists outside the jurisdiction of the organisation's rules and regulations. Dalton and Todor (1985a), Bemmels (1991a) and Klass, Mohony and Wheeler (2005) include specifically in their explanations and research into grievance activity, employee initiated appeals against their termination of employment within

the scope of an organisation's grievance processes, regardless of the finer point that the dismissed employee no longer attends the workplace. There are frequent exceptions to unfair dismissal claims occurring outside the disciplinary/grievance junction, such as where employees are made redundant or terminated whilst on probationary employment. Disciplinary action would not precede necessarily such dismissals, but these dismissals still occur within the scope of the organisation's human resource management activities.

Thus this study engages the concept of dismissal as a method of workplace discipline, or management practice in the situation of redundancy. The use of dismissal practices by the employer offers the aggrieved employee the opportunity to engage in workplace grievance activity and make a claim of unfair dismissal. With the employment relationship out of commission, unfair dismissal claims require the use of an external third party to conciliate and if need be arbitrate ultimately. It is this end of the process, that is, grievance arbitration by an external, neutral body that forms the conceptual focus of this study.

1.2 Research Justification and Contribution

Six reasons are outlined below to provide the justification for conducting this research. Combined, these items identify the value of this research on the basis that it: analyses factual data in an area of research where it is difficult to collect data; is developed from findings and suggestions found in research previously conducted by academics; and provides human resource and industrial relation practitioners with information that will be of benefit to their policies and practices, particularly in light

of Australia's recent amendments to unfair dismissal laws under the Workplace Relations Act.

First, this research addresses an area that is traditionally data poor as a result of difficulty in accessing research subjects. Bemmels and Foley (1996) attest to the difficulties researchers have in gathering data in the area of grievance activity. They explain that the option of coding information from employer or union records which in general limits a study to one organisation. The option of surveying employers, unions or employees results in problems with non response bias, reliability and validity. This research overcomes both these problems by using the published decisions of AIRC from January 2004 to December 2005 to generate cross sectional and longitudinal data on actual unfair dismissal events for empirical analysis.

Second, previous grievance research has tended to focus on analysing the grievance process at either the grievance initiation or grievance filing stage (Bacharach & Bamberger 2004). This study, instead, is located specifically at the results or outcome stage of the grievance processing phase and ultimately contributes to a fuller understanding of entire grievance process.

Third, Neuman (2003) suggests that descriptive research that broadens the range of variables that links to larger research into a phenomenon provides strength and clarity to a research project. In addition, the need for across industry sector research into grievance activity was identified by Peterson and Lewin (1981 in Bemmels 1994) raising concerns that grievance studies tend to focus on specific industry sectors and as a consequence suggest grievance studies are likely to have limited

generalisability. The independent variables in this study contribute further information about a range of 'inherent' variables involved in the grievance phenomenon and the use of across industry data provides more generalisable information.

Fourth, the characteristics of grievant gender and arbitrator gender are included to contribute to existing research into gender influences in grievance activity. Studies have been conducted on the influence that the gender of both the aggrieved employee and the decision maker have on the outcome of a grievance case. Specifically relevant are the studies conducted by Bemmels (1990), Caudill and Oswald (1992), Dalton and Todor (1985a), and Knight and Latreille (2001) which are further explored in the literature review. This research contributes to the understanding of gender bias in grievance arbitration by assembling more evidence on gender and the extent of its relationship with arbitrary decisions in the industrial setting.

Fifth, the outcomes of this research will benefit policy making by management, human resource professionals, unions and other bodies that contribute to the management and maintenance of employee relations within Australia. Waring and Bray (2006) suggest that the value of industry studies is that they provide real world assessment and feedback on the effects of ever evolving employment legislation. On this point, this study visits decisions prior to the recent major Australian industrial relations legislative amendments in 2006. Amid claims that 77,000 jobs would be created in the small business sector without the hindrance of unfair dismissal legislation (Harding 2002), the Australian federal government amended the Workplace Relations Act 1996 so that businesses with less than 100 employees were

exempted from the rigour of unfair dismissal laws which meant employees from such firms could no longer access the federal Australian Industrial Relations Commission (AIRC) with an unfair dismissal claim. Interestingly, when the UK government once considered denying people working in firms employing less than 20 staff access to unfair dismissal procedures, it was described as a 'draconian solution' (Earnshaw, Marchington & Goodman 2000, p. 65). Whilst debate as to whether the output of such a law will result in a working poor for the employees in small firms (Argy 2005; Earnshaw, Marchington & Goodman 2000) continues, this paper contains empirical evidence about unfair dismissal claims transpiring from Australian businesses and the resultant arbitration decisions made by the AIRC, *before* the amendments took place.

Finally, a further practical outcome is that it serves to indicate the level of 'human resource health' that exists in relation to various demographic variables in Australia. Drawn from the information obtainable from the published arbitration decisions, this research indicates whether employees in certain occupational groups, industry sector, from a particular business size, or of a particular gender have higher success rates when pursuing arbitration. Tougher workplace management practices could expose employers to more grievances (Knight & Latreille 2001).

1.3 Research Objective and Supporting Research Questions

It has so far been outlined that this study intends to contribute to existing studies in grievance procedure research. This study focuses on grievances that are settled by arbitration and it analyses specifically industry, business size, skill, reason and

gender related features of such arbitrated grievances. Based on these factors, the research objective of this study is:

"To examine the association between inherent characteristics of unfair dismissal arbitration cases and consequent arbitration decisions."

The strategy for achieving the above research objective is to investigate, in detail, five specific research questions. These questions are listed below and included under each one are the statistical hypotheses that have been deducted after reviewing the relevant literature pertaining to each research question. The critical analysis and rationale for deriving each of these hypotheses is contained in the third Chapter.

Research Question One:

Does the industry sector and size of the business in which the employment relationship occurs bear any relevance to the arbitration outcome?

H_1 *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

H_3 *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

H_4 *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

Research Question Two:

Is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration?

$\boldsymbol{H_5}$ *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

Research Question Three:

Is there an association between the reason dismissed and the outcome of the arbitration hearing?

$\boldsymbol{H_6}$ *The reason for dismissal is associated with the arbitration outcome.*

Research Question Four:

Does the aggrieved employee's gender bear association with arbitration outcomes?

$\boldsymbol{H_7}$ *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

$\boldsymbol{H_8}$ *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

***Research Question Five*:**

Does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims?

H_9 *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

H_{10} *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

1.4 An Explanation of Key Terms and Concepts

Key terms and concepts discussed in this study are presented in Table 1.1 with the aim of achieving a baseline understanding or measure of such terms and concepts, so that a consistent interpretation is applied throughout the study.

Table 1.1 Terminology used in this Thesis

Term	Explanation
AIRC	Acronym for Australian Industrial Relations Commission. This is Australia's federal level industrial tribunal.
Applicant	The dismissed employee making a claim through the AIRC. Also referred to in this study as the 'grievant' or 'aggrieved employee'.
Arbitrator	In the context of this study, this is the person with the authority to make the binding decision on the unfair dismissal claim. See also 'commissioner'
Arbitration	This is the 'final means of resolving disputes' (Bemmels 1990) whereby the decision made by the arbitrator is binding on all parties. Arbitration occurs after the failure of mediation or conciliation processes.

Term	Explanation
Arbitration outcome	The AIRC arbitrator's decision or determination that is ultimately in favour of the aggrieved employee or alternatively, in favour of the employer. Also referred to in the study as a 'decision' and forms the dependent variable for statistical analysis.
Commissioner	Appointees of the AIRC responsible for hearing unfair dismissal claims presented to it. Also referred to in this study as the 'arbitrator'.
Dependent variable	See 'arbitration outcome'.
Grievant	See 'applicant'
Grievance process	This is the formal mechanism by which employees can appeal alleged unjust treatment in the workplace or disciplinary action taken by employers such as formal warnings and termination (Dalton & Todor 1985a). Identified by Bemmels and Foley (1996) as consisting of several stages: the occurrence of the grievable event; initiation of a grievance; and the processing of a grievance.
Independent variable(s)	In this study they are: industry sector; business size; occupational skill level; reason dismissed; grievant gender; arbitrator gender.
Respondent	The employing body responsible for the dismissal.
Small business/ (SME)	Acronym for small and medium size enterprises. The Australian Bureau of Statistics' (2002) definition of a small business includes those employing up to 19 workers; medium business employ from 20 and 199 people; and large businesses are those employing over 200 staff.
The Act	Australia's federal level industrial relations act, titled 'The Workplace Relations Act (1996)'. Controversial amendments, known as *Work Choices* were made to it in 2006.
Unfair dismissal	*The Australian Labour Law Reporter* (1981 cited in CCH Australia Ltd 2005a) explains that unfair dismissal occurs when an employee's contract is terminated for reasons which are considered harsh, unjust or unreasonable.
Workplace grievance	According to Cappelli and Chauvin (1991) this occurs when an employee feels his/her rights under workplace agreements, awards, policies and practices, have been violated by his/her employer or a representative of the employer.

1.5 Brief Overview of the Research Design

Primarily identified as descriptive quantitative research, this section will identify how this study sits within a positivist research framework, along with an explanation of the type of data used for this study, data source and collection, and statistical methodology. Finally, a brief justification of internal and external validity of this study is provided. Further detail in relation to all these aspects of the research design is provided in the fourth chapter on research methodology.

This study embodies a traditional or positivist approach to its undertakings. A positivist approach to social science research is associated with work that is quantitative, detached and objective (Leedy & Ormrod 2001) and involves deductive reasoning to resolve the research question into a number of variables and hypotheses (Neuman 2003).

An electronic data source is used to access the data for this research. Since July 2000, the AIRC has published the decisions of its commissioners onto its website on a daily basis. These decisions contain a combination of factual information and identified conjecture about a dismissal, along with the commissioner's determination and reasons for the determination. A sample was generated by collecting unfair dismissal arbitration decisions for a two year period, 2004 and 2005.

The type of data collected in this study is categorical, a term used to describe data that is grouped, for example, age, race, gender. Although categorical data are restrictive because it limits the classification purely to one way of measurement, its usefulness is that it provides discrete, informative categories for comparisons and

correlations (Leedy & Ormrod 2001). The categorical data calls for non-parametric testing for its statistical analysis. The chi-square test of proportions and Pearson chi-square test of association (Kemp & Kemp 2004) are used to perform the analysis on this data.

The internal validity of this study is bolstered by the type of data used in the study. In essence, appropriate conclusions for the type of data collected in this study are more likely because the data were collected in an unobtrusive measure. Obtrusive collection tends to result in people behaving or responding differently because they are aware that some form of measurement is taking place (Leedy & Ormrod 2001). The evidence collected from the source documents is factual', requires little inference on behalf of the coder nor subject to people altering their behaviour or responses because of the presence of a researcher.

External validity refers to the generalisability of the study to other contexts. Leedy and Ormrod (2001) suggest that external validity is enhanced by having a real-life setting; a representative sample and replication in a different context. The real life setting is captured by way of the data coming from genuine unfair dismissal cases heard in the AIRC. A representative sample of the population is required for external validity and this is addressed in this study by analysing all the unfair dismissal decisions of the AIRC for a two year period, instead of only taking a smaller random sample from the same period. Further defence of validity and reliability are provided in chapter four on research methodology.

1.6 Scope of the Research

The parameters of this research are addressed in this section. Seven key aspects which influence the scope of this study are discussed. These seven key issues relate to the data range, issues surrounding the Australian industrial legislation and operations of the AIRC, and the boundaries of non-parametric analysis. Combined, they have set the boundaries of this research.

First, the focus of this research is arbitrated grievances. This means that outside the scope of this study are grievances which are settled through conciliation by a neutral third party and/or settled between the employer and employee without the assistance of a neutral third party. The type of arbitrated grievance this study investigates is limited to unfair dismissal arbitration cases determined by the AIRC by a single arbitrator (commissioner). To avoid double counting of decisions and compromising the focus of this study, it does not include 'appealed' decisions which occur before a 'full bench' of three commissioners. The AIRC provides its arbitration services to Australian employees who are employed: by a constitutional corporation; in the Commonwealth public sector; in the State of Victoria or a Territory; in an interstate or overseas trade or commerce as a waterside worker, maritime employee or flight crew officer (Australian Industrial Relations Commission 2006b).

However, and as a second point, there are some unavoidable limitations embedded in the raw data as a result of the AIRC definition of eligible employees who can access its arbitration services. Under Australia's Workplace Relations Act 1996 at the time of the study, the following types of employees (grievants) were excluded from AIRC arbitration services in terms of seeking relief for an alleged unfair dismissal: fixed

term or specified task employees; probationary employees; casuals engaged for less than 12 months; trainees; seasonal workers; non-award high income earners (in 2006 the total annual remuneration package is capped at $98,200) (Australian Industrial Relations Commission 2006b). These employees still attempt to access the AIRC, and when this does occur the AIRC process is to dismiss the grievant's case for lack of jurisdiction, which is captured in the data. However, the potential is that the data has gaps resulting from dismissed employees not pursuing an arbitration claim through the AIRC because they are aware they are excluded employees under the Act.

Third, this research is within an Australian context which means that there may be inherent influences from the federal industrial relations legislation that limit its generalisability to wider world contexts. For example, in March 2006 the Australian federal industrial relations legislation was amended to prevent grievants working for firms with fewer than 100 employees access the AIRC with an unfair dismissal claim (Australian Industrial Relations Commission 2006b). At the time of finalising this thesis, the return of the Labor government to power in the 2007 federal election, this legislation was to be reviewed. The data extracted for this study are taken from the years 2004 and 2005, before this exemption occurred.

Fourth, the AIRC may dismiss a case if it is determined that it is 'out of time'. This means that an employer has successfully argued that the grievant has lodged the application for an unfair dismissal hearing more than 21 days after the termination took place. The legislation has a 21 day window for dismissed employees to file for AIRC assistance (Australian Industrial Relations Commission 2006b). This study did

not capture ‘out of time’ applications because insufficient detail appeared in this type of decision.

Fifth, the AIRC is the federal level industrial tribunal. Each Australian state also have a state commission providing unfair dismissal conciliation and arbitration services [apart from the State of Victoria which transferred its industrial powers to the federal government (Sappey et al. 2006)]. This study captures the arbitration activities only at the federal level.

Sixth, reference needs to be made to the scope of the characteristics identified in this study. It was discussed in Section 1.2 Research Justification and Contribution, that the chosen characteristics, which are industry, occupation, reason, grievant’s gender and arbitrator’s gender have links to previous research. Furthermore, they prove to be ‘robust’ characteristics for identification from secondary source documents. That is, they are easily recognised, definitive terms that are unlikely to be misinterpreted when being assessed. Undoubtedly many other characteristics not identified in this study bear a potential relationship with the outcomes of a grievance arbitration case, such as the demeanour of the grievant or the employer. Although this information may be found in many of the documented decisions, it is information far more susceptible to interpreter bias than those characteristics identified for this study.

Finally, the statistical method used to analyse empirically the data is correlational, which means that the study does not provide evidence of causation (Kemp & Kemp 2004; Leedy & Ormrod 2001) between the industry, occupation, reason, and gender issues and whether or not a grievant has a successful arbitration hearing. This study

will show where there is an association (and whether it is strong or weak association) between the characteristics and the outcomes of the arbitration hearing.

1.7 Thesis Structure

This thesis is divided into six chapters as shown by the visual outline contained in Figure 1.1. Chapters two and three are devoted to exploring the work of previous researchers into the employee grievance process. Furthermore, as employee grievances have been researched world wide, these chapters have the role of placing this research within the Australian context. Individual hypothesis to explore each of the characteristics are presented at times appropriate within the literature review chapters. Chapter four details the research methodology and chapter five reports the statistical analysis of this study. Chapter six presents the discussion of results and conclusions with indications of future research directions.

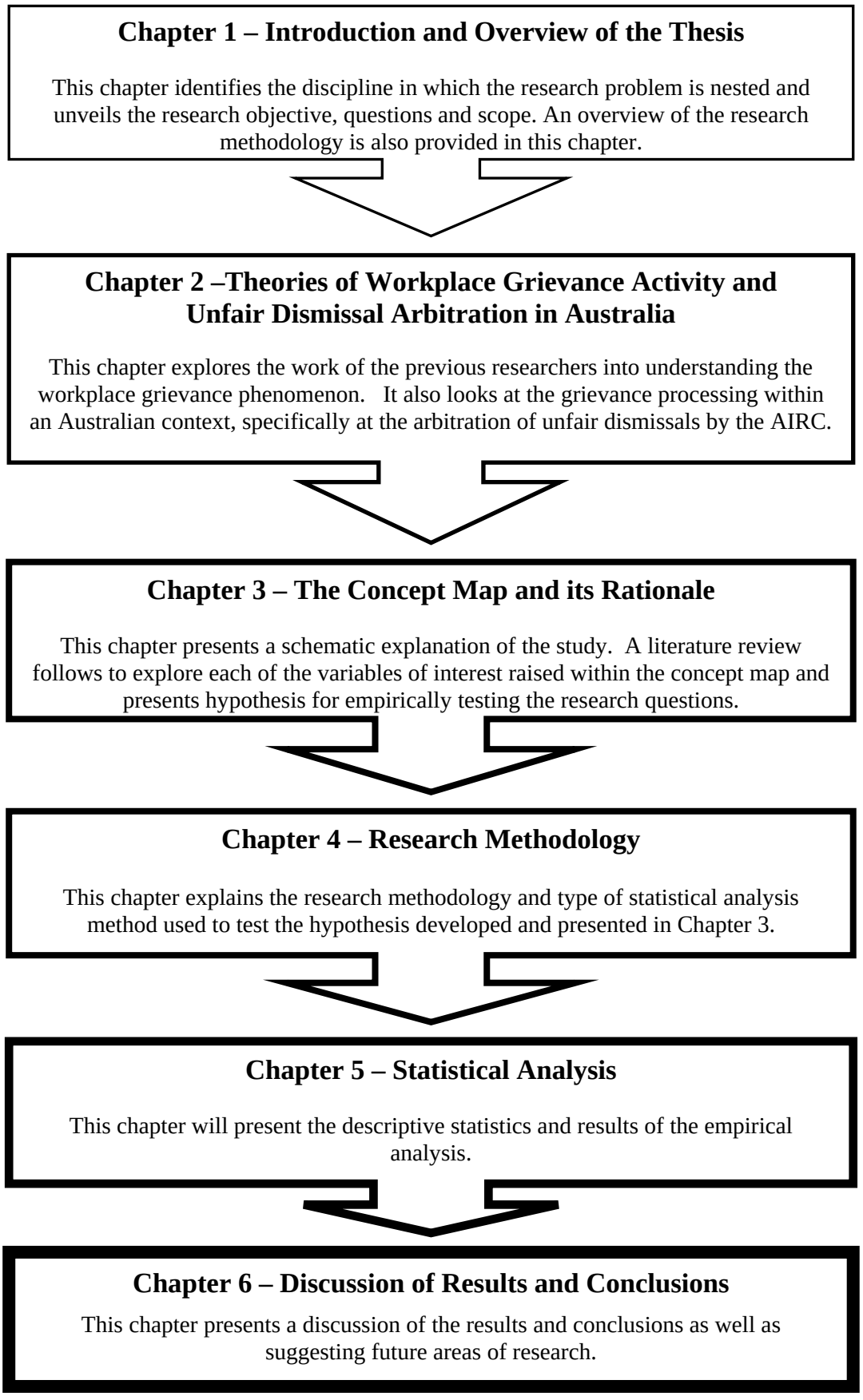


Figure 1.1 Diagram of Thesis Structure

1.8 Chapter One Summary

The main issues covered in the first chapter of this thesis are that the study will contribute to the body of knowledge available on grievance activity within the workplace. It focuses specifically on arbitrated grievances and as such, AIRC unfair dismissal decisions will be used as an exemplar of arbitrated grievance activity for investigation. This study is within an Australian context which may limit its world-wide generalisability but its strength is that it will address across industry and across occupational data. It will also investigate the relevance of the reason for the grievance and the genders of both the grievant and arbitrators to the arbitration outcome. Key terms and concepts were defined as well as a statement of the major research objective and supporting research questions to guide the study. The research design was described as fitting within the positivist approach suggesting that a quantitative methodology of posing hypotheses and testing of such hypotheses will form the basis of what is effectively a descriptive study. The chapter concluded with a diagrammatical outline of the thesis so that the contents and expectations of the remaining chapters are clearly identified.

CHAPTER TWO

THEORIES OF WORKPLACE GRIEVANCE ACTIVITY AND UNFAIR DISMISSAL ARBITRATION IN AUSTRALIA

2.0 Introduction

This chapter is divided into two major sections: first, a review of the research that has been undertaken to develop an overall understanding of workplace grievance activity; and second, contextualising the research to unfair dismissals within the Australian industrial relations environment.

In the first section, the challenge that researchers have in developing a complete model of the grievance process is identified, with the conclusion that a 'piecemeal' approach is being taken to investigate various aspects of grievance activity. A table of relevant theories developed initially by Bemmels and Foley (1996) has been expanded to identify potential areas of theoretically based research into the grievance process. After which, the social science theories of exit-voice, expectancy, equity, attribution, procedural and distributive justice theories, and how they have been applied by previous researchers to understand particular parts of the grievance process, are discussed.

The second major division of this chapter will provide the reader with an understanding of the Australian context of this research. This is facilitated by briefly noting the impact of relevant federal legislation that regulates unfair dismissal grievance arbitration at a national level in Australia. This follows with an outline of the unfair dismissal grievance process through the AIRC, combined with a review of AIRC unfair dismissal arbitration activity over the last six years. This section

concludes with a discussion on the debate surrounding claims of bias within the AIRC.

2.1 Theoretical Explanations of Workplace Grievance Activity

The introductory chapter identified that this investigation falls within the realms of 'workplace grievance' research by suggesting that an unfair dismissal application pursued by a dismissed employee and determined by a third party, is an example of a workplace grievance. Cappelli and Chauvin (1991, p. 3) describe 'grievances' as 'charges by employees that their rights have been violated by management actions or decisions'. They further qualify this definition by suggesting that generally such violated 'rights' are those rights established through collective bargaining, company policies or precedent. The reasons a person initiates a grievance are initially discussed in this section of the chapter. The discussion will then align grievance activity with relevant social science theories.

An early study addressing the reason an employee pursues a grievance by Dickens (1978) suggested that the aggrieved employee needs to restore a personal sense of justice. Grievants, according to Dickens, were motivated primarily to seek arbitration for unfair treatment because they wanted to 'clear their name'. Over two decades later, this theme continued with Earnshaw and Marchington (2000) suggesting that applicants sought redress in order to deny the misconduct for which they were terminated or to challenge the harshness of being dismissed. Research conducted by Bemmels (1994) into the reasons an employee initiates a grievance concluded that behaviours exhibited by supervisors and union officials highly influence the employee's decision to pursue a grievance. Behaviours such as friendliness and

frequency of interactions, particularly in relation to those behaviours of the supervisor, were significantly more influential than their personal characteristics (eg, their gender, seniority) or the procedures used to handle a grievance. These findings indicate that individuals pursue grievance arbitration because of personal feelings of retribution. Bemmels, Reschef and Stratton-Devine (1991) made further contributions to the understanding of the grievance initiation process by incorporating the role or impact that supervisors and union delegates have on employees in their decision to pursue a grievance. Two further external determinants, referred to as organisational level determinants of grievance activity, were investigated by Cappelli and Chauvin (1991). They found a significant relationship between the availability of alternative work and the degree of risk to wage premium (that is, receiving less money in another job) and the willingness of an employee to pursue a grievance.

Despite the work of researchers to develop the theoretical model of the grievance process, Bemmels and Foley (1996) presented the opinion that a 'complete theory' of the grievance process has not been developed, but moreover, it may be impossible to develop a theory that profoundly captures the complexity of the grievance process. Klass (1989) had also earlier recognised the need to develop a framework integrating the reasons employees file grievances and the impact the grievance system has on the employee's behaviour.

For this reason, the piecemeal approach to grievance research continues, but in order to strengthen the theoretical grounding of research into workplace grievance procedures, Bemmels and Foley (1996) recommended a list of a number of relevant

social science theories. A contribution of this thesis is to extend this list by incorporating additional details about these theories in the form of a brief explanation of each of these theories (second column) and suggesting how each theory can be used to explain aspects of workplace grievance activity (third column).

Table 2.1 Social Science Theories and their Potential Application in Workplace Grievance Research

Theories suggested by Bemmels & Foley (1996)	Brief Explanation of Theory	Relevance to Workplace Grievance Activity
Management Style & Behaviours	Management texts refer to a variety of theories describing styles and behaviours demonstrated by managers and those in decision making capacity. As a first example, a commonly identified theory on this topic is McGregor's (1960 in Robbins, Millett & Waters-Marsh 2004)) Theory X and Theory Y which represents polar assumptions on how humans behave in the workplace and thus how they need to be 'managed'. Theory X suggests people dislike work thus need to be controlled and coerced into performing. Theory Y gives people the ability to exercise self control and self discretion and are motivated to perform when given responsibility (Mullins 2005).	In terms of grievance research, the management practices either endorsed culturally by an organisation or those adopted by various individuals in an organisation could be examined using any one of a variety of management theories. In conjunction an assessment of grievance activity within the subject organisation and in particular, reasons that grievances are raised, could be examined to determine the relationship between management styles and grievance activity. It could be that certain management styles are associated with grievances of a particular nature being raised.
Contract Complexity	MacLeod (2000) described contract complexity as the problem of trying to develop a feasible contract that allows for future, unknown contingencies. As the number of tasks requiring performance increases, so does the contract complexity. This contract theory states that is it is impossible to write a contingency plan for every possibility. Thus contracts all carry some degree of incompleteness. Therefore, the ideal to strive for is the 'optimal' contract which enables the parties to use information as it becomes available to regulate the relationship.	Contract complexity is relevant to the employment contract. Grievances may be raised as a means of 'regulating' the employment contract. Alternatively, organisations that have a flexible or receptive culture and procedures in place to address contingencies that strike at the heart of the employment contract may have lower grievance rates. Additionally, the relationship between more 'complex' contracts compared to simpler contracts and associated levels of grievance activity from the holders of such contracts could be investigated using this theory.

Theories suggested by Bemmels & Foley (1996)	Brief Explanation of Theory	Relevance to Workplace Grievance Activity
Expectancy Theory	Vroom's (1964 in Robbins, Millett & Waters-Marsh 2004) expectancy theory suggests people are motivated to act or 'perform' to a particular level based on the perceived attractiveness of the outcome achieved by such activity. People are thus motivated by different factors due to the variation in preference for particular outcomes that exists across people.	This theory was used by Klass (1989) to contribute to the explanation of grievance initiation. Employees will not initiate a grievance course of action unless they believe they are likely to 'win' and that the award will be one that his/she finds beneficial. This theory would also give scope to explore the employee's ability (by way of knowledge of or access to expertise) to action the grievance.
Exit-Voice Theory	Rusbult & Lowery (1985 in Robbins, Millett & Waters-Marsh 2004) identified Exit –Voice as responses to job dissatisfaction. Employees can elect to 'exit' which involves behaving in a way that shows their intent or action of leaving the organisation such job hunting and resigning. Alternatively, they may 'voice' in which they will engage in behaviour that aims to constructively improve conditions such as union engagement.	This theory was used by Cappelli and Chauvin (1991) to contribute to the explanation of grievance initiation. The presence of a grievance policy and procedures within an organisation provides the employee with a 'voice' mechanism. Exit mechanisms are excised by employees with a grievance by engaging in, for example, unauthorised industrial action or by resignation.
Reactance Theory	Developed by Brehm (1989) within the area of consumer behaviour. Brehm suggests that people will psychologically react against a threat that eliminates their freedom to make their own choice. 'It impels the individual to restore the particular freedom that was threatened or taken away. It does not impel the individual to acquire just any freedom - - only the one threatened or taken away will do' (Brehm 1989, p. 72). The theory makes several predictions about the varying attractiveness of alternatives to the lost freedom and the 'implication principle' incorporated within this theory suggests that when faced with a threat to one freedom an individual perceive threats to other logically related freedoms.	This theory relates not to general freedom but specific behavioural freedoms (Brehm 1989) for example, one's choice to have lunch in the canteen or outside in the office grounds. Thus within the context of workplace grievance initiation, it could be used to explain the likely courses of action employees might pursue when workplace freedoms are threatened. Furthermore the 'implication principle' within this theory could be used to investigate the frequency or hostility of grievance activity in which employees engage in order to protect further threats to freedom.
Attribution Theory	Heider 1958 instigated the philosophy of attributing the behaviour of an individual to a cause (Leopold, Harris & Watson 2005). Today the causes are categorised into three areas: internal and controllable (the behaviour occurred based on the person's level of effort); internal and uncontrollable (the behaviour occurred because the person lacked resources or ability) and external causes (the behaviour occurred because of issues outside the person's control, thus they are not at fault). Attribution errors can easily occur through biases in our perception (Leopold, Harris & Watson 2005).	This theory was used by Bemmels (1991a) to contribute to the explanation of the rationale behind decisions made by third party arbitrators when a grievance escalates to arbitration. This study explored the weight each arbitrator placed on each of level of control criteria prescribed within the theory.

Theories suggested by Bemmels & Foley (1996)	Brief Explanation of Theory	Relevance to Workplace Grievance Activity
Distributive Justice	Rawls (1971 in Leopold, Harris & Watson 2005) suggested that distributive justice refers to a fair outcome, particularly in economic terms. Thus distributive justice has implications for distribution of rewards, training and promotion opportunities and work timetabling.	Dalton and Todor (1985b) suggest distributive justice within a grievance process is evidenced by workplace characteristics that suggest a cultural commitment to fairness within the workplace such as anti-discrimination policies. The level of acceptance of grievance outcomes could be an indicator of the level that the employee felt that the outcome possessed distributive justice (Dalton & Todor 1985b).
Procedural Justice	Rawls (1971 in Leopold, Harris & Watson 2005) suggested that procedural justice is upheld when the *process* for making a decision is fair. This requires transparent and unbiased decision making.	Procedural justice implications in the grievance process can be investigated by researching the ability of employees to access a grievance process and the fairness in the procedures themselves within a subject organisation or demographic. The level of acceptance of a grievance outcome could be an indicator of the level that the employee saw the process to be procedurally fair (Klass 1989).
Escalating Commitment	This theory refers to a person or persons exhibiting greater levels of commitment to a decision over a period of time and investment. In particular, this commitment will continue regardless of evidence emerging that indicates that the course of action or original decision was incorrect. (Hitt, Black & Porter 2005).	This theory could be used to investigate the determination grievants and/or employers can show to fighting a grievance through to arbitration and even appealing an arbitration decision. It could also have applicability to explaining the occurrence of vexatious or frivolous grievance claims.
Prospect Theory	Developed within the economic discipline, Kahneman and Tversky (1979) described a model of how one makes choices. It suggests that choices are influenced strongly by how they are 'framed' or propositioned. Consequently, an irrational choice might be explained because of framing effects. This theory supports the notion that an individuals and organisational decision making can be irrational, particularly when decision making relates to negotiations (Elangovan 2002).	This provides a theoretical foundation to explore the way in which negotiations during the grievance processing stage are actually 'stated' or verbalised and whether particular language or presentation of positions and settlement terms relate to the successful or non successful management of a grievance.
Equity Theory	Adams (1965 in Robbins, Millett & Waters-Marsh 2004) theory on equity identifies that a person has *perceptions* of fairness. A person will base his/her perceptions on how they see their treatment in comparison to others. These 'others' can be within his/her organisation or external to the organisation. Leopold, Harris and Watson (2005) pair this theory to a concept called the 'felt fair principle.'	This theory was used by Klass (1989) to explain that an employee will pursue a grievance to reduce a level of perceived inequity. Furthermore the author used this theory to explain that the outcome of a grievance claim will trigger further pursuance of a claim if the employee felt the outcome does not address a state of inequality.

Theories suggested by Bemmels & Foley (1996)	Brief Explanation of Theory	Relevance to Workplace Grievance Activity
Agency Theory	Executive level management are delegated the authority and seen as 'agents' of the business owners or shareholders. (Mullins 2005) As agents they are expected to maximise the owner's interests. Agency problem occurs when the executive level management have to balance their obligations to maximise benefits, in the short term, and not jeopardise the potential of longer term benefits to the organisation (Martocchio 2004; Mullins 2005)	This theory has application in the grievance processing stage. It is of particular applicability to the management or employer side of the grievance process. Management have the problem of balancing their obligations to the greater good of the organisation with those of the individual grievant. It also has applicability during the development of grievance policies and procedures so to enable processing that is fair and reasonable to both parties.
Decision Dilemma Theory	In critique of the escalating commitment theory, Bowen (1987) proposed that decision makers do not willing commit to a obviously failing course of action as suggested by escalating commitment. The author suggested that the decision to take a particular course of action is a result of managing the dilemma between (a) the degree of commitment to a course of action; and (b) the ambiguity of information available to the decision maker about the results of previous courses of action and predictions for future events.	This theory could support research into the type, quality and quantity of information that employers and grievants use for decision making purposes during the grievance process and its relationship with whether they decide to initiate a grievance, settle a grievance, drop a grievance or pursue a grievance through to arbitration.

Table 2.1 suggests a number or organisational theories that could be used to research grievance activity in the workplace and it identifies several theories that have already been applied by academics to support their research into the grievance procedure phenomenon. The theories used in those studies are: exit-voice; expectancy; equity; procedural, and distributive justice; and attribution theory. The application of these theories to the various stages of the grievance process is addressed in the ensuing discussion.

Firstly, Cappelli and Chauvin (1991) explained that the exit/voice theory had application in the grievance process, particularly at the 'grievance initiation' phase. Exit and voice are polarised employee responses to dissatisfaction. Voice means that the employee aims to constructively solve a problem, whereas exit means that the

employee's behaviour focuses purely on leaving the organisation (Colvin 2003; Robbins, Millett & Waters-Marsh 2004). Within the context of grievance handling, a 'voice' mechanism is provided by the grievance process itself, however, disgruntled employees may elect to not use the grievance process and instead engage in other 'voice' mechanisms, such as unauthorised industrial action or, although less individually focused, collective bargaining (Cappelli & Chauvin 1991). The authors further suggest that, exit, although often not a viable alternative and less constructive, is more likely to occur within organisations void of a grievance process.

Secondly, Klass (1989) used expectancy theory to explain the 'grievance initiation' phase by suggesting that employees evaluate the 'utility' or benefit of filing a grievance before deciding to pursue a grievance. Expectancy theory is a motivation theory that suggests that the amount of willingness demonstrated by a person to behave in a particular manner is based on two things. Firstly, whether the person expects to get a particular outcome by acting that way (instrumentality) and secondly, whether the person finds the outcome attractive (valance) (Robbins, Millett & Waters-Marsh 2004). Klass (1989) suggests that a person is more likely to file a grievance if the perceived attractiveness of doing so exceeds the attractiveness of any other available course of action, also taking into consideration the potential 'value' of the remedy they might get and the likelihood that they might actually win.

Thirdly, equity theory was also applied by Klass (1989) to the 'grievance initiation' stage as an alternative explanation of motivation employees have for filing a grievance. In this respect, the author suggested that within the realms of equity theory, the employee will pursue a grievance to reduce their perceived inequity, as

opposed to selecting some other action to reduce their inequity perception, such as absenteeism or reducing productivity. In difference to the calculated decision making of expectancy theory, equity theory gives room for spontaneity that may be borne out of anger, frustration and/or impulsiveness (Wheeler 1985 in Klass 1989).

Equity theory continues to have application into the 'grievance processing' phase of the grievance phenomenon whereby Klass (1989) considered that in the event that an employee is returned an unsuccessful grievance claim, their response to continue to amend the inequity will depend on whether the employee felt that the grievance mechanism was procedurally just. At this point, an application of the justice theories in the grievance process can be made.

Consequently, and as a fourth point, Klass (1989) suggests that procedural justice is entwined with the employee's perceptions of equity and whether they believe a grievance system is fair. This requires the individual to believe that the procedure leading to a decision encased adequate opportunities for the individuals input and whether that input was given consideration. Principles of justice can be considered on two continuums, 'distributive justice' and 'procedural justice'. Procedural justice requires the employer to follow a fair process that, for example, includes a full investigation of the problem as well as providing an opportunity for an employee to respond to any allegation (Alder & Henman 2001; Mac Dermott 2002). Distributive justice implies that the decision resulting from a process is fair, or put another way, that the person who is given the judgement has a 'feeling' that it is fair. Alder and Henman (2001) posit that procedural justice has a level of instrumentality with distributive justice. They suggest that distributive justice is influenced by the

characteristics of the decision making process. For example, an organisation's adoption of procedural justice principles is witnessed through the processes it uses to adjudicate workplace disputes such as using ombudsmen, appeal systems, union/management grievance processes and open door policies (Dalton & Todor 1985b). Whereas, Dalton and Todor (1985b) suggest that distributive justice is the desired outcome in the workplace and the reason for implementing equal employment opportunity policies, anti-discrimination polices, and employee selection processes.

Procedural justice theory suggests that an employee's perception of equity depends not only on distributive justice, that is, the fairness in the amount and allocations of awards, but also on the fairness of the process that was used to determine the distribution of such awards (Robbins, Millett & Waters-Marsh 2004). Procedural justice perceptions influence an employee's job performance; organisational commitment; trust in management; and his/her intention to quit (Colvin 2003; Robbins, Millett & Waters-Marsh 2004). Recent studies conducted by Klass, Mahony and Wheeler (2005) contend that decision makers (arbitrators) are influenced most by the strength of evidence against the employee, followed by evidence of discrimination, employee work history and procedural compliance by the employer which supports the principles of attribution theory, procedural and retributive justice. The application of procedural justice theory in grievance processing is that an employee's acceptance of the outcome of a grievance hearing will be enhanced if the employee believes the procedure was fair (Klass 1989).

A further justice theory called retributive justice also has application to workplace grievance processes. Retributive justice in grievance processing relates to the decision making rationale of a grievance arbitrator in that he/she will attempt to restore justice to those harmed or those who complied with norms, as opposed to those who deviated from their obligations or accepted norms (Vidmar 2001 in Klass, Mohony & Wheeler 2005). The further application of this theory is that employee favoured rulings in termination cases are more likely when stronger evidence against the employer is presented by the dismissed member or staff, and conversely, less likely when stronger evidence against the dismissed employee is presented by the employer (Klass, Mohony & Wheeler 2005).

The final theory to be discussed in the context of explaining the grievance process is attribution theory. This theory conceives that variations will occur in the way one person judges another's behaviour because the judgement process involves the 'judge' making assumptions about the cause of the behaviour (Robbins, Millett & Waters-Marsh 2004). Robbins, Millett and Waters-Marsh (2004) outlined that the core of attribution theory is the interpretation of the behaviour being assessed on three criteria, consensus, consistency and distinctiveness. Consensus refers to the judgement about whether the behaviour demonstrated by the individual, would be the same behaviour demonstrated by other people in the same situation. Consistency is determined by whether the person behaves in the same manner over time. Distinctiveness refers to the variation in behaviours that a person displays in different situations, for example, whether a person has a 'typical' behaviour or approach across a range of tasks or whether they have done something 'distinctively' different in a certain situation.

The bottom line of attribution theory is that the three criteria are further considered by the decision maker in terms of whether they were factors within the personal control of the individual or not. The subsequent deduction in attribution theory is that if the decision maker attributes external or environmental issues are at the root of the individual's behaviour then the judgement on the individual is not appropriate. Alternatively, if causes within the individual's control were perceived to be at the root of the behaviour then a judgement that reflects on the individual is likely to be taken. Robbins, Millet and Waters-Marsh (2004) describe that under attribution theory, decision makers can make judgement errors by putting too much weight on the internal factors and less on the external factors, thus, for example, attributing an employees poor performance to problems with the employee's attitude (internal cause) rather than lack of workplace training (external cause).

Bemmels (1991a) used attribution theory as the basis of field experiments with grievance arbitrators. Two hundred and thirty arbitrators reviewed a dismissal case and completed a questionnaire about their decision. The result of this research supported generally attribution theory as an explanation of how arbitrators decide dismissal cases. Specifically, the 'consensus' criteria held up in that grievants who committed an offence that other colleagues committed without dismissal, were more likely to have a decision made in favour of the grievant. 'Consistency' was also sustained because arbitrators tended to treat first time offenders more favourably than grievants who had committed the same offence on one or more previous occasions. The contravention that Bemmels (1991a) found with attribution theory in dismissal arbitration was with the 'distinctiveness' criteria. This criteria would suggest that the arbitrators would be influenced by the grievant's work record. The Bemmels (1994)

study found that arbitrators were no more likely to find in favour of grievants that possessed a favourable work record on issues aside from the offence. In relation to the arbitrators ascribing causal attributions as either internal or external, the study found that experienced arbitrators are more likely to make internal causal attributions than their less experienced counterparts. This conclusion was based on the finding that experienced arbitrators are more likely to find for either of the two extremes of the grievance outcome options. That is, they either dismiss a claim or reinstate the employee with full back pay.

Bemmels (1991) reasoned that experienced arbitrators were more confident in judging the individual (internal causes) as personally responsible. They tended not to accept external causes as the reason for the offence and as such handed down decisions that directly impacted the individual. Less experienced arbitrators tended to make external attributions for the employee's behaviour and consequently tended to mediate a 'middle ground' decision.

2.2 Contextualising Workplace Grievance Activity within Australia

This section of chapter two outlines the Australian context of this research. It is intended in this section to provide a précis of relevant aspects of the Australian industrial relations environment. The benefit of describing the context of the research problem is that it facilitates a further appreciation for the research problem by providing information on issues that whilst relevant to the research, are not specifics of the research question (Cavana, Delahaye & Sekaran 2001). To this end, an overview of the relevant Australian industrial legislation (as relevant to the time period of the data collection, 2004 and 2005) and the operations of the AIRC in its

management of unfair dismissal arbitration is provided. This section concludes with a discussion on the ongoing debate in Australia about the neutrality of the AIRC.

2.2.1 Industrial Legislation Relevant to Grievance Arbitration in Australia

As this study pertains to grievance arbitration in the form of unfair dismissal arbitration cases heard by the AIRC, this subsection will provide an exposition of the Australian industrial legislation applicable to unfair dismissal. The timeframe from which the case data are collected is 2004 and 2005 during which time the relevant legislation was the Workplace Relations Act 1996. It is noted that Australia's industrial relations environment has altered with amendments to the Act passed by the Senate in 2005 and operationalised in 2006 which are again under review as a result of the 2007 change of government. The impact of the 2006 amendments on dismissal practices in Australia is that businesses with 100 or less employees are exempt from being pursued by an aggrieved employee through the AIRC with an unfair dismissal claim. Furthermore, employees regardless of business size, are not able to bring an unfair dismissal claim before the AIRC if they have less than six months service or if they have been made redundant. The Act has however, maintained employees' rights regardless of business size or length of service, to pursue an *unlawful* dismissal claim through the AIRC.

During the time from which the unfair dismissal cases were drawn for this study, the unamended Workplace Relations Act 1996 was in force which gave arbitral powers to the AIRC to settle unfair dismissal disputes regardless of business size. This Act's principal objective, in part, 'is to provide a framework for co-operative workplace relations which promotes the economic prosperity and welfare of the people of

Australia'. Clauses of specific interest to this study can be found in Sections 170CA and 170HB. Section 170CA subscribes the 'fair go all round' test in which consideration is given as to whether the employer dealt with the employee in a way that was oppressive, unjust or unfair (CCH Australia Ltd 2005b). Section 170HB refers to dismissals alleging harshness, unjustness or unreasonableness. The Act does not provide definitions of 'harsh, unjust or unreasonable' but it did require (in 2004/05) the commissioner to take into account the following list of factors when determining whether a dismissal was harsh, unjust or unreasonable:

(a) Whether the reason for termination was valid in terms of the employee's conduct, ability or operational demands; whether the employee was advised of this reason and whether the employee was given an opportunity to provide a reason to defend any work issues.

(b) In the event that the termination was due to lacking work performance, whether the employee had been given previous warnings.

(c) The extent to which both the size of the business or the level of human resource management expertise available to the employer impacted on the process used to terminate the employee, for example, was the business sizeable enough to expect that it had access to expertise relevant to investigate and process a dismissal.

(d) The operational requirements of the employer and any other matters the AIRC considers relevant.

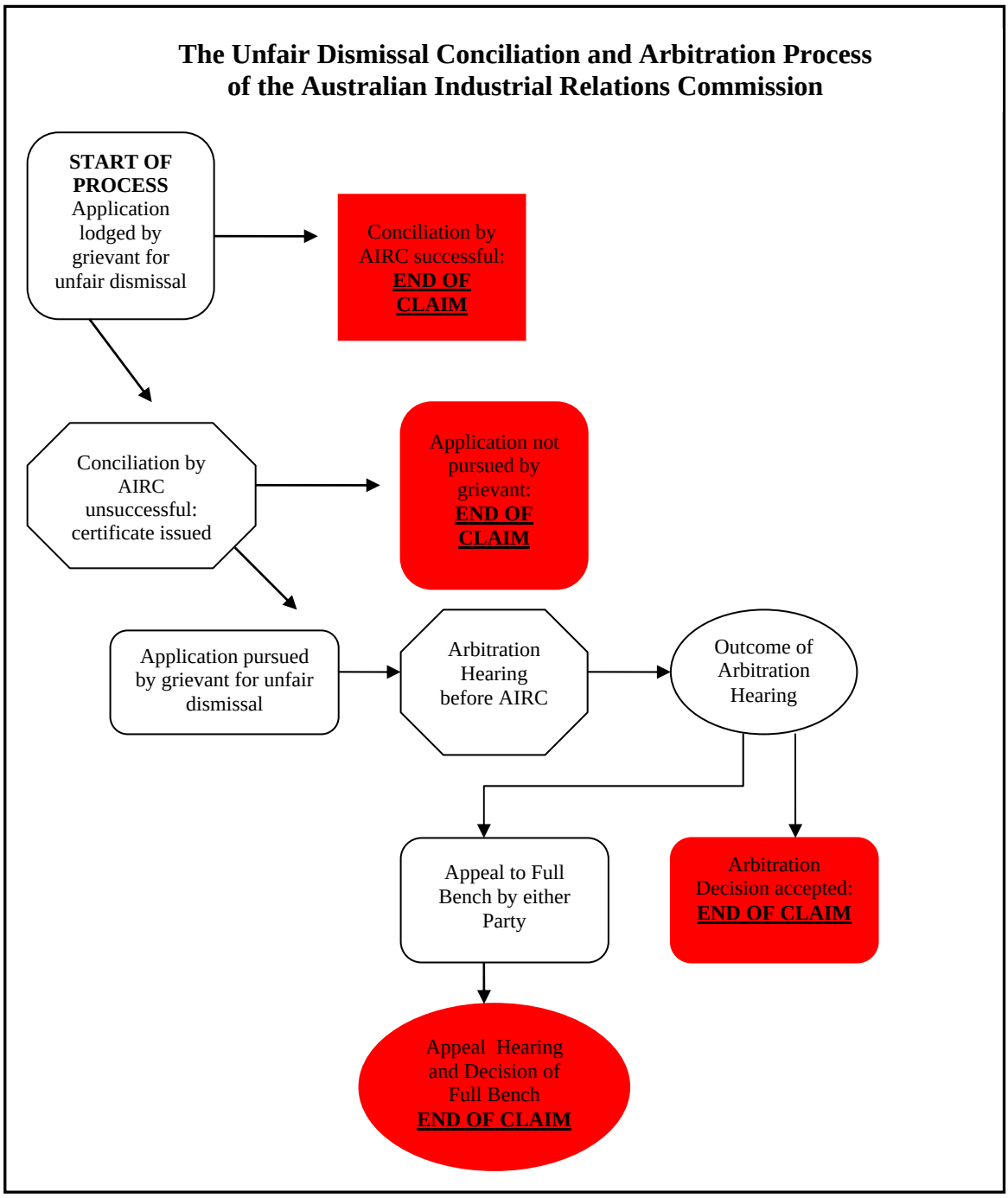
(The above list was adapted from the Australian Industrial Relations Commission 2003a; Department of Consumer and Employer Protection 2005; Department of Employment and Workplace Relations 2003).

The ideal of being fair when processing the dismissal of an employee is embraced within the conventions of the International Labour Organisation, specifically convention number 158 on termination of employment (International Labour Organisation 1982). Within Australia, the application of the principle of justice in the processing of unfair dismissal claims by the AIRC is that commissioners must grant a fair hearing and act without bias (CCH Australia Ltd 2005b). However, the AIRC does not have to abide by extensive technicalities and legal forms as they exist in law courts. The AIRC commissioner can correct errors, waive irregularities and extend time limitations (CCH Australia Ltd 2005b). Commissioners, in order to expedite an efficient resolution, are expected to avoid technicalities, including rules of evidence. Regardless of the range of freedoms at hand to a commissioner, natural justice however must still be evident to ensure people have a fair hearing by an impartial arbitrator. The Act decrees that commissioners are expected to deal with matters in a 'just and reasonable' manner and according to the Act, Section 110(2)(c) conduct their business using principles of 'equity, good conscience and the substantial merits of the case'.

Having established the responsibilities of the AIRC in arbitrating dismissals, the discussion will progress to explain the process within which aggrieved employees engage with the AIRC to have their grievance heard and determined.

2.2.2 The Unfair Dismissal Claim Process in the AIRC

Figure 2.1 depicts the unfair dismissal claim process of the AIRC followed by a discussion of this process.



(Adapted from: AIRC Guide Termination of Employment – General Information 2005, accessed 15 May 2005 <www.airc.gov.au>)

Figure 2.1 A flowchart outlining the process of handling unfair dismissal grievances by the AIRC

Figure 2.1 shows that the unfair dismissal grievance process is triggered by the aggrieved person whose employment has been terminated and who files an unfair

dismissal application with the AIRC (a 21 day timeframe applies between dismissal and filing). The first service offered by the AIRC is that a commissioner will attempt to settle the matter privately and confidentially through conciliation. If this is not successful, the commissioner will issue a certificate which fulfils the pre-requisite conciliation requirement before the arbitration proceeding can take place. The commissioner will indicate on the certificate an assessment of the merits of the application. If conciliation is unsuccessful and the grievant decides to pursue his/her claim, the grievant can proceed to an arbitration hearing (within 28 days of the certificate being issued). Arbitration before a commissioner involves public hearings and the decision of the commissioner is binding on both parties. Decisions are public documents which are required to be published. The AIRC has provision for appeal from either party against a commissioner's decision and this takes place before a panel of three commissioners.

2.2.3 Unfair Dismissal Arbitration by the AIRC: Historical Records

The following tables indicate the level of activity in which the AIRC has engaged to provide a grievance process to employees in relation to dismissal from their workplace. Table 2.2 demonstrates that during the seven years from 1 July 1999 to 30 June 2006, the AIRC received a total of 49,698 unfair dismissal applications from aggrieved employees. The majority of these applications were either settled at conciliation or not pursued by the aggrieved employee, with only 1,718 (3.46%) proceeding to an arbitrated settlement by the AIRC. The arbitrated decision was appealed in 423 (24.6%) of these cases.

Table 2.2 History of Unfair Dismissal Applications / Arbitration Decisions by the AIRC

AIRC Activity	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	7 Year Total
Unfair Dismissal Applications Lodged	7,498	8,109	7,461	7,121	7,044	6,707	5,758	**49,698**
Unfair Dismissal Arbitration Decisions	346	291	291	241	223	202	124	**1,718**
Unfair Dismissal Full Bench Appeal Decisions	84	87	63	52	53	44	40	**423**

(Adapted from: Australian Industrial Relations Commission 2000, p. 1, 2001, p. 2, 2002, p. 15, 2003c, p. 15, 2004, p. 15, 2005, pp. 16, 62, 2006c, p. 9)

As mentioned in the previous paragraph, over the course of seven years, 24.6% of arbitrated unfair dismissal decisions were pursed with an appeal. The next table (Table 2.3) provides further information on the success or otherwise of those appeals.

Table 2.3 History of Unfair Dismissal Full Bench Appeals in the AIRC

Outcome of Appeal	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	7 Year Total
Upheld	36	27	28	17	16	14	18	**156**
Dismissed	48	60	35	35	37	30	22	**267**
Total Appeals Determined	**84**	**87**	**63**	**52**	**53**	**44**	**40**	**423**

(Adapted from: Australian Industrial Relations Commission 2000, p. 1, 2001, p. 2, 2002, p. 15, 2003c, p. 15, 2004, p. 15, 2005, p. 14, 2006c, p. 13)

Table 2.3 reveals that out of a seven year total of 423 appeals, only 156 appeals (36.9%) were upheld. This means that 267 (63.1%) of the appeals were dismissed, which suggests that if a party pursues an appeal, the descriptive statistics show that they are more likely to be unsuccessful.

Finally, the outcomes of the arbitrated decisions by the AIRC on the 1,718 unfair dismissal cases for the seven years from 1999 to 2006 are covered in Table 2.4 below. This table categorises its decisions into four options: the first two listed in the table are favourable to the aggrieved employee and the last two favourable to the employer.

Table 2.4 History of Unfair Dismissal Arbitration Orders by the AIRC

Type of Decision	1999/ 2000	2000/ 2001	2001/ 2002	2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	7 Year Total
Order for payment to dismissed employee	121	96	96	81	84	69	52	**599**
Order for Reinstatement of dismissed employee	27	42	47	24	22	18	17	**197**
Application dismissed on merits of employer's case	196	142	148	136	117	115	55	**909**
Other (eg breach found but no order)	2	11	0	0	0	0	0	**13**
Total Arbitrations determined	**346**	**291**	**291**	**241**	**223**	**202**	**124**	**1,718**

(Adapted from: Australian Industrial Relations Commission 2005, p. 16, 2006c, p. 15)

The statistics in Table 2.4 demonstrate that 599 decisions (34.9%) ordered a payment to the dismissed employee; 197 decisions (11.5%) ordered that the aggrieved employee be reinstated to the employer's workforce; 909 applications (52.9%) were

dismissed consequently giving a 'win' to the employer; and 13 decisions (.7%) involved the finding of a breach but gave no recompense to the aggrieved employee. These statistics indicate that the most frequently arbitrated decision is one that has the aggrieved employee being unsuccessful with the commissioner dismissing the case due to lack of merit on the employee's behalf or because the merits of the employer's case convinced the commissioner to find in favour of the employer. However, these statistics reflect that whilst decisions favourable to the employer combine to equal 53.6% which is just over the majority, the remaining 46.4% reflect decisions that supported claims from aggrieved employees. This narrow difference indicates that collectively, the AIRC treats neither the employer nor the employee with favour. In narrow contrast to these descriptive statistics, a recent empirical Australian study of 342 unfair dismissal decisions by the AIRC between 1997 and 2000 found that 50.6% of the complaints were found in favour of the grievants (Chelliah & D'Netto 2006) of which only 10.8% were reinstated.

2.2.4 Claims of Bias in the AIRC

The challenge for arbitrators (commissioners) within Australian industrial tribunals to make accurate decisions was acknowledged in the quote from a former judge of the Commonwealth Industrial Court, Sir Richard Eggleston in which he said, 'in the arbitration jurisdiction everything is relevant, but there is very little which is helpful' (in Jeffery 2005). This subsection will firstly consider the theoretical possibility that bias could exist within arbitration decision making and secondly critically discuss the ongoing claims of bias within the AIRC.

A literature search on judicial type decision making revealed articles suggesting that, put simply, judges sometimes make mistakes. Articles by Kirby (1999); Sangha and Moles (1997); Seamone (2002); and (Bemmels 1991b) suggest that a judge's interpretation of the evidence has an important bearing on the outcome of a case and intuition and personal influences are unavoidable. Sangha and Moles (1997) suggest that judges' 'findings of fact' are in reality a combination of attributions and assertions as well as facts.

Further weighing in on the theoretical discussion that bias can occur in judicial decision making, Mason (2001) writes that there is a difference between judicial neutrality and judicial impartiality. The author suggests that neutrality is humanly impossible whilst impartiality, a guiding judicial principle, calls the judge to be open minded and act upon differing opinions presented to them. Mason (2001) further acknowledged the existence of 'unconscious prejudice' which contends that bias is not 'neatly packaged' and can exist in spite of the decision maker believing they are not prejudiced.

The question of whether the AIRC is completely free of bias receives regular attention by the Australian media. There have been calls by union and employer representatives in Australia over the years that the Federal government 'stacks' the AIRC in favour of either the employer or employee by appointing commissioners with an employer representative focus or union representative background respectively (Alexander & Lewer 2004; Moore 2005; Robinson 2004; Wilson 2005). In 2002 it was suggested that 19 of its 49 commissioners had a union background, and at the presidential level only 6 of the 20 commissioners had union backgrounds

(Construction Forestry Mining and Energy Union 2002). As late as 2007, the Australian Labor Party (ALP) made a 'commitment to take the bias out of the industrial relations system' by proposing a new selection process for commissioners and replacing the AIRC with Fair Work Australia (Australian Labour Party 2007, p. 1) in the event of winning power. (The ALP won power in November 2007). The ALP states that it will 'break a cycle that sees each political party in government use appointments to the industrial umpire as political spoils' (Australian Labour Party 2007, p. 2).

The other side to the bias debate would suggest that similar to the principles in the legal system, the 'rule against bias' operates in the AIRC which requires the 'decision maker' to be impartial in relation to the case they are deciding (CCH Australia Ltd 2005b; Van Essen et al. 2004) and the AIRC promotes its commitment to ensuring the impartiality of its judicial officers (Giudice 2002). The Act decrees that commissioners are to be appointed by the Governor-General on recommendation from the federal government who in its opinion possess the 'appropriate skills and experience in the field of industrial relations' (Australian Industrial Relations Commission 2003b). Commissioners undertake an oath to perform impartially the duties of the office. Dabscheck (1993) noted that the AIRC will hand down decisions sometimes in favour of the employee, sometimes in favour of the employer or government and at other times, decisions which favour no one and instead upset all parties involved. It could be argued from these statements that the AIRC commissioners make personally unbiased decisions based solely on the merits of the individual cases.

However, the counter argument to unbiased decision making in the AIRC needs to be addressed. The AIRC has through its appeals process a mechanism to counteract bias. In the AIRC, Justice Guidice's decision on 21 October 1998 (*Section 45 appeal against decision issued by Commissioner Tolley on 20 May 1998 Telstra Corporation Limited* 1998), quashed the previous decision made by the hearing commissioner on the grounds that the commissioner's conduct during the course of the hearing had 'the effect of conveying an appearance of impermissible bias in the actual decision to a reasonable and intelligent lay observer' [Vakauta v Kelly at 573]. Justice Guidice maintained that the AIRC's duty is to be an independent tribunal.

The AIRC publishes its decisions for the scrutiny of the Australian people. These publications have been described as elaborately informed, reasoned decisions covering arguments and evidence (Issac 1981 in Blain, Goodman & Loewenberg 1987). Each decision of the AIRC is examined by the affected parties and in many cases by the media, government and other interested parties (Provis 1997). This practice provides 'transparency' in the decision making of each commissioner.

The conclusion drawn from this discussion is that the AIRC in spite of its obligations and oaths, is not free from the human frailty of its commissioners and thus bias could well occur on occasion in its unfair dismissal decisions. Theoretically it was outlined that there are grounds to suggest that bias exists within any judicial decision making process, and by definition this includes the arbitral decision making of the AIRC. The AIRC by its own admission has on occasion engaged in biased behaviour and upheld an appeal on this ground. The positive side is that the Australian system has installed systematic measures of providing an appeals avenue, holding public

arbitration hearings and providing publicly accessible decisions as an offer of transparency and protection against bias.

2.3 Chapter Two Summary

This chapter sought to provide the reader with insight into the research conducted by academics into understanding workplace grievance activity. It was presented that a 'complete' theory of the grievance process is yet to be developed because of the complexity of the factors in and around the grievance process. Despite the lack of a complete grievance model, researchers are working on gaining an understanding of various aspects of grievance activity, and have used various social science theories to improve their understanding. For example, Cappelli and Chauvin (1991) found useful application of the exit-voice theory in grievance research to possibly provide one explanation of turnover variations between organisations with or without a grievance process. Whilst Klass (1989) used expectancy theory to support a possible explanation as to what triggers an employee to initiate a grievance.

The second element of this chapter was devoted to describing the Australian landscape of industrial relations and its approach to arbitration. More specifically, it explored the AIRC methodology for handling unfair dismissal claims. The unfair dismissal case load of the AIRC was reviewed, where it was reported that the AIRC received 43,940 unfair dismissal claims over a six year period with only 1,594 proceeding to an arbitration settlement. The ongoing Australian debate about the neutrality of the AIRC was addressed in the final section of the chapter with the conclusion that theoretically bias can occur and it has occurred within the AIRC, but processes are in place with the aim of eliminating it.

The next chapter continues with a review of the literature, however, it will move to the specific focus of identifying the relevant studies and contextual issues pertaining to each of the characteristics raised in the research objective and supporting research questions, that is, industry, occupation, reason, grievant's gender and arbitrator's gender.

CHAPTER THREE

THE CONCEPT MAP AND ITS RATIONALE

3.0 Introduction

Whilst the previous chapter discussed a number of social science theories and their application to workplace grievance activity and Australia's approach to dismissal in the workplace, this third chapter is devoted to exploring the specifics of the research questions associated with the research objective. The chapter will commence by recounting the research objectives and questions and will follow with a concept map crafted from the research questions. The benefit of a visual or conceptual representation of the study is that it aids in assisting the reader's understanding of the concepts and paradigms being used by the researcher (Cavana, Delahaye & Sekaran 2001). The concept map is supported by a review of the literature undertaken to explore each of the variables of interest raised within it and thus ultimately, the research objective and questions. This involves an exploration of each of the following specific areas of interest: industry, business size, occupational skill demand, reason, grievant's gender and arbitrator's gender. At its conclusion, each major area of interest will culminate in the formulation of one or more hypotheses for analysis in Chapter 4.

3.1 The Research Questions and the Concept Map

It was previously mentioned that the objective of this study is:

"To examine the association between inherent characteristics of unfair dismissal arbitration cases and consequent arbitration decisions."

This objective is achieved by seeking answers to the following research questions:

Research Question One:

Does the industry sector and size of the business in which the employment relationship occurs bear any relevance to the arbitration outcome?

Research Question Two:

Is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration?

Research Question Three:

Is there an association between the reason dismissed and the outcome of the arbitration hearing?

Research Question Four:

Does the aggrieved employee's gender bear association with arbitration outcomes?

***Research Question Five*:**

Does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims?

The elements of these five research questions are represented in the concept map which follows in Figure 3.1. Business research methodologists recommend the development of a conceptual framework to illustrate the course of the study (Cavana, Delahaye & Sekaran 2001; Zikmund 1997). Conceptual frameworks or models are elaborate, iterative depictions of concepts, inter-relationships and their measurements

which are formulated to spearhead explanatory or experimental research. However, for the purpose of this research, which is descriptive, a less elaborate model, albeit one that clearly identifies concepts, is suitable (Zikmund 1997). For this reason, it is more accurate to refer to Figure 3.1 as a concept map rather than a conceptual framework (Zikmund 1997). Alternatively known as a 'mind map', the concept map contains all the elements considered relevant to the topic and indicates the *perceived* relationships between concepts by using lines and arrows (Zikmund 1997). After the explanation of this map, a further literature review on each of the variables of interest will follow to finalise the chapter.

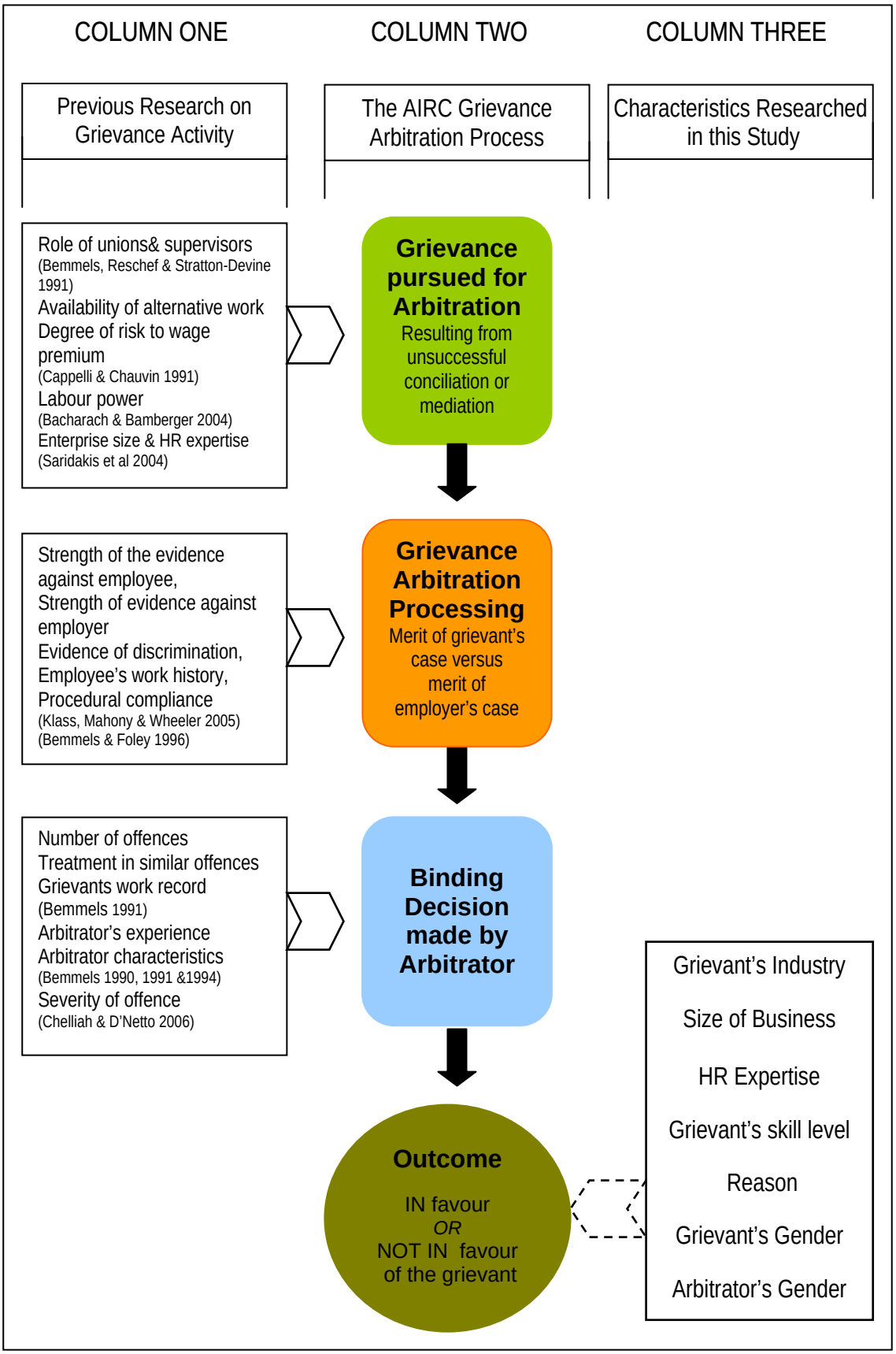


Figure 3.1 The concept map of characteristics associated with grievance arbitration

The explanation of Figure 3.1 commences with column one. Column one serves to indicate the type of characteristics previous researchers have found to be relevant to the initiation and processing of a workplace grievance. These characteristics are aligned with the relevant stage of the grievance process as indicated in column two. The grey shapes in column two reflect a grievance arbitration process (which is abstracted from the full unfair dismissal arbitration process presented in the previous chapter, see Figure 2.1). This study seeks to identify characteristics that might be associated with the arbitration outcome. These characteristics are presented in the separate box under column three. The dotted arrow between the round outcome box and the third column box containing the characteristics under investigation indicates non-causal characteristics. They do not directly feed into the arbitration process in the same manner as do the primary facts of the case because justice principles would indicate that they should not influence the decision maker (CCH Australia Ltd 2005b). Instead, the characteristics are *inherently* present during the arbitration. The objective of this research is to determine whether these inherent characteristics, being the industry, business size, occupational skill of the grievant, the reason the dismissal occurred, the grievant's gender and arbitrator's gender are associated with either a successful or unsuccessful outcome to the grievant. In line with each of their relevant research questions, these characteristics are discussed in turn, for the remainder of chapter three.

3.2 Research Question One: Literature Review

The first research question is: Does the industry sector and size of the business in which the employment relationship occurs bear any relevance to the arbitration

outcome? The literature review pertaining to the variables, industry and business size follow.

3.2.1 Industry: Australian Issues

The general theoretical hypothesis contended in this section is that some industries are more prone to unfair dismissal arbitration as a result of industry specific issues. The following discussion will address Australian issues of labour hire and decreasing unionism that potentially could influence the access and use of the AIRC as a workplace grievance arbitrator across industries.

First, a development in the Australian industrial landscape is the 'labour hire' employee. With the benefit of avoiding the increasing demand to be knowledgeable in industrial relations and human resource requirements many organisations are using labour hire firms to place staff so that they can hire and dismiss employees without the risk of unfair dismissal litigation (Campbell & Brosnan 1999; Hall 2002). Labour hire firms offer advantages such as avoiding payroll tax and superannuation contributions and the ability to avoid unfair dismissal regulation. Underhill and Kelly (in Campbell & Brosnan 1999) indicate that the use of labour hire occurs most commonly in male dominated industries such as construction and transport. Other areas resorting to labour hire include couriers, gardeners, leaflet distributors, commission based sales persons, personal care providers and outworkers, and industries using the labour of lower skilled and clerical/administrative workers (Campbell & Brosnan 1999; Hall 2002). It is contended that industries which are higher users of labour hire have less dismissal arbitration because the labour hire

employees do not have access to unfair dismissal grievance processes and the services of the AIRC.

Second, union density has dramatically dropped in all industries, in all occupations and in all demographic groups during the last 30 years (Burgess 2000; Campbell & Brosnan 1999; Cooper 2005; Lewis 2004). It appears that this trend is not only occurring in Australia, but worldwide (Bender & Sloane 1999; Broadbent 2005). The following table presents statistics on the reduction in union membership in the top five most unionised industries in Australia between 1993 and 2003.

Table 3.1 Comparison of Unionisation Rates in Five Australian Industries between 1993 and 2003

Industry	Unionisation rate (above 50%) in 1993	Unionisation rate in 2003
Communication Services	73.8%	31.2%
Electricity, Gas and Water Supply	71.5%	53.7%
Transport and Storage	58.6%	38.2%
Government Administration and Defence	56.2%	38.4%
Education	56.3%	41.8%
Mining	55.2%	29.1%

(Source: Cooper 2005, p. 203)

It is clear from Table 3.1 that the communication services industry has had the most dramatic decrease in union membership with a differential of 42.6% between the 1993 and 2003 figures which provides sound evidence that union membership is on a strong downturn. Lewis (2004) and Burgess (2000) suggest the decline in unionisation rates indicate that membership is seen as less relevant due to increases in casual, part-time, female and youth employment. A benefit of a strong union presence in organisations is that they tend to work with management to implement

formal grievance procedures, or some other form of 'hearing' before terminating an employee, and thus such organisations tend to have lower dismissal rates than organisations with weak unions and limited restrictions on management's human resource practices (Klass, Brown & Heneman III 1998). However, it appears the picture for union organisations will continue to weaken as amendments to unfair dismissal rules for small business 'reshape the boundaries within which unions can act' (Cooper 2005, p. 207). The implication of declining unionism on unfair dismissal claims is that employees without union support, in particular 'lower power employees', may be reluctant to file grievances without union support, thus the arbitration system offers limited use to employees perhaps most in need of such a means of workplace redress (Bacharach & Bamberger 2004, p. 537). The first statistical hypothesis to addresses research question one is formed on the basis that people working in industries that use labour hire firms and/or without union representation are more likely to encounter jurisdictional barriers to having a grievance heard before the AIRC.

H_1 *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

3.2.2 Industry and Grievance Activity: Previous Research

This subsection discusses relevant research findings that generally support the proposal that differences occur across industries in terms of their workplace grievance activity. The second major point of this subsection considers the prospect that industries vary in the management of their human resources which could affect the way employees within each industry are treated when they are being disciplined

or have a grievance. For example, service related industries face particular human resource management difficulties because of the intangible nature of the work performed. Furthermore, industries comprised of small and medium operations possess less capital to invest in human resource management expertise.

Evidence collected in Australia suggests that dismissal rates vary between the manufacturing industry and other industry classifications. Specifically, Klass, Brown & Heneman III (1998) used the data collected in the 1991 Australian Industrial Relations Survey of 1,596 workplaces to analyse the determinants of dismissal usage. It was found that wide variations existed in how Australian organisations used employee dismissal. This analysis identified that, compared to the manufacturing industry, less dismissals occurred in mining, communications, utilities, construction, transportation, financial services, public administration and community services.

In terms of initiating a grievance, Bemmels (1994) conducted research that found inconsistencies in the levels of grievance initiation across Canadian industries. Bemmels suggested variations in grievance activity across industries are caused by differences in union and management policies or the quality and clarity of collective agreements. Also on this point, Cappelli and Chauvin (1991) in Bemmels (1994) proposed that industry variations in wages and alternative job opportunities may account for differences in grievance initiation rates. Bemmels and Foley (1996) indicate the need for further research to explain the wide variation in grievance activity across industries. This is demonstrated using statistics from Bemmels' 1994 Canadian survery that found, for example, the railway transport industry had an average grievance rate of 48.2 grievances per 100 employees per year, the Canadian

federal government had a 23.3% grievance rate, and the lowest was a .6% grievance rate in the education industry.

The second major discussion in this subsection is that variations could occur across industries and their grievance arbitration rate because of variations in human resource management issues and practices. A notable human resource related variation is that the service related industries face particular issues in relation to management of workplace grievances. The level of human resource expertise was described in the British hospitality industry by Head and Lucas (2004) as exemplifying 'hard' human resource principles where staff are treated as a commodity with few participatory opportunities. The hospitality industry belongs to the general categorisation called the 'service sector'. Service sector industries, as defined by Mills and Dalton (1994), are those industries that trade in the intangible, are not easily inventoried and are complicated in their delivery. Mostly likely, this complication arises from the human involvement with delivery of the service. Service industries pose a particular set of problems in grievance management because the human, service nature of the work equates to 'imprecise' standards and expectations which thus makes grievances involving performance, attitude and output particularly complex to resolve (Mills & Dalton 1994). The potential for a grievance to escalate to arbitration for settlement is therefore more probable in the service sector because of the intangible, imprecise nature of the work. This gives rise to the second hypothesis for this study, which is:

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

3.2.3 Business Size: Australian Issues

Figures from the Australian Bureau of Statistics (2007a) reveal that 89% of employing businesses in Australia engage up to 19 staff. Prior to the 2006 industrial relations amendments, the Australian Chamber of Commerce and Industry along with industry groups and peak employer bodies lobbied the federal government extensively about the costs of unfair dismissal provisions to small firms and their subsequent reluctance to hire staff (Sheldon & Thornthwaite 1999). The lobbying was effective, and motivated with concern that unfair dismissal regulation may be preventing small business from hiring staff (Harding 2002; Harris 2002; IRM Letter 2005; Ridout 2005), the federal government exempted small businesses from unfair dismissal laws.

This and a number of other amendments operationalised in 2006. The impact of these amendments is broad, but pertinent to this topic is that businesses with 100 or less employees can not currently be pursued by an aggrieved employee through the Australian Industrial Relations Commission (AIRC) with an unfair dismissal claim. The boon for these sized businesses is that they can alter their establishment numbers with little regulatory hindrance. (During the finalisation of this thesis, the November 2007 federal election resulted in opposition party winning power, and promised a review of the 100 employee exemption legislation. The statistical analysis in this research will review unfair dismissal arbitration pre-reform and will indicate the exposure of small and medium size business to unfair dismissal arbitration claims.)

3.2.4 Business Size and Grievance Activity: Previous Research

One of the identifiable concerns commonly threaded throughout the research on human resource management in small and medium sized enterprises (SMEs) is that they engage in informal practices which expose them to risks such as high turnover and litigation for reasons such as discrimination, safety breaches or unfair dismissal (Kotey & Slade 2005; Kuratko & Hodgetts 2004; Mazzarol 2003; Wagner 1998). Based on their research of small establishments in the UK hotel industry, Head and Lucas (2004) suggest that SME employees subject to disciplinary action are more likely approached in an informal manner, which may not incorporate an opportunity for the employees to defend accusations. In essence, lack of formal disciplinary procedures where the owner/manager holds the locus of control for HR related decisions (Harris 2002; Matlay 2002) raises the 'possibility of arbitrary management practice' with potential to be 'detected' by the arbitrators (Head & Lucas 2004, p. 697/705). The study by Saridakis et al. (2006) supports the proposition that small businesses without HR expertise are at a disadvantage at arbitration. This study of British employment tribunal applications detected a trend. 'Small businesses were more likely to lose (compared) to medium firms who in turn, were more likely to lose than large firms… with an HR Department' (Saridakis et al. 2006, p. 26). It is noted that this analysis included, in addition to unfair dismissal cases, other types of claims such as wages, breach of contract and discrimination.

Earnshaw, Marchington and Goodman (2000, p. 67) in their investigation into dismissal arbitration in small business found that 'employers won more cases than they lost'. The context of the study was SMEs within the transport and communication, hotels and catering, and engineering industries in the UK.

Furthermore, the study found that in nearly every instance where the SME employer lost a case, it was not because of the reason they dismissed the employee, but for the way in which they actioned it. For example, an employee in question may not have been given an opportunity to respond to an accusation as part of the disciplinary process, the employer may not have conducted a sound investigation, denied the employee representation, or entered the disciplinary meeting with a predetermined stance to terminate the employee's contract. The potential result of SMEs relying on informal HR practices could be that they risk denying employees 'procedural justice' when dealing with a problem employee or processing redundancies.

Another challenge to managing dismissal in SMEs noted by MacMahon and Murphy (1999), Earnshaw, Marchington and Goodman (2000) and Marlow and Patton (2002), is that the close proximity in which the owner/manager and employees work fosters sociable relationships between them. These authors further contend that in the event that the owner/manager needs to discipline or terminate an employee, they are ultimately compromised in maintaining the 'personal distance' and unbiased opinion required to objectively manage the process. Earnshaw, Marchington and Goodman (2000, p. 71) note the concern that arbitrators 'may not understand how small firms operate and do not give sufficient weight to size and administrative resources when making a decision [and] will not understand the challenge of remaining unbiased for a small business manager'.

Based on the complexity of the industrial relations regulations and the level of expertise needed, for example, to navigate dismissing an employee (Goodman et al. 1998; Pratten & Lovatt 2005), it could be fair to suggest that unsuccessful arbitration

hearings are less likely from organisations that have a higher degree of human resource and industrial relations expertise. As a consequence the following two hypotheses are formulated:

H_3 *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

H_4 *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

3.3 Research Question Two: Literature Review

The second research question states: 'is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration? The literature review pertaining to the variable, occupational skill level follows.

3.3.1 Occupational Skill Level: Australian Issues

The main point made in this subsection is that workers in lowest skilled occupations in Australia are facing a tougher job market compared to those occupations requiring managerial and professional level skills. At the same time, Australia is in the grip of a major skills shortage for not only professionals but also skilled people in trade related occupations. As a consequence lower skilled people are facing mounting pressure to up skill in order to tap into the lucrative job market existing for the trade through to professional level occupations.

Demographic trends in Australia have impacted on skill availability. Two trends are considered responsible for producing the skill shortage, according to Jorgensen (2005b), an ageing workforce with the baby boomer generation set to retire within the next ten years and declining fertility rates which have not adequately replenished the supply of young people entering the workforce. The result of these two trends is that Australia does not have enough workers to perform the available work and that the existing workforce has to develop new skills at a much faster and frequent basis than ever before (Schienstock 1999 in Jorgensen 2005a).

Labour demand in Australia is mostly for highly skilled workers with increases in managerial, professional and para-professional occupations (Gollan, Pickersgill & Sullivan 1996; Kelly & Lewis 2001; Lewis 2004; Lewis & Ong (undated)). Since the mid eighties, technology and automation have displaced labourers and elementary clerks and service workers with low skills that perform repetitive, routine work in each industry except for the wholesale and retail trade industry (Kelly & Lewis 2001). These authors suggest that both 'blue collar' and low skilled 'white collar' workers face reducing work opportunities because they are the least equipped to adjust to rapid technological advances. Low skilled workers continue to face redundancy as all organisations pursue productivity improvements (Pappas 1998 in Lewis & Ong (undated)). Meredith and Dyster (1999 in Lewis & Ong (undated)) indicate that the only option for the 'unprotected' low skilled workers is up-skilling. Having established a picture of turbulence for the people performing lower skilled work it could be that more activity is occurring in workplace grievances due to ill conceived redundancy practices towards staff in occupations with lower skill requirements.

3.3.2 Occupational Skill Level and Grievance Activity: Previous Research

Research on the relationship between an employee's occupation and their success or otherwise in grievance procedures is limited. Two studies are outlined below that provide guidance on the development of a hypothesis suitable for further analysis.

First, a study by Caudill and Oswald (1992) reports that grievants who worked in semi-skilled, clerical, supervisory or professional positions are treated more leniently than grievants in other job classifications. The authors suggested that the reason employees in such occupations tend to receive more favourable outcomes may be the result of the multi-tasking nature of such positions which consequently prove difficult to measure quantitatively in terms of productivity. This means that grievants who are charged with poor performance may be able to rebut soundly the employer's argument that has been heavily based on indeterminate measures.

Second, a study by Cappelli and Chauvin (1991) considered the instigation of grievance procedures amongst occupation groups within manufacturing plants. This research unearthed that people who worked in skilled occupations, specifically the craft and trade occupations did not tend to have a high usage of grievance procedures. The authors contend that tradespeople have strong individual bargaining power resulting from a shortage in available workers suitable for the trade labour market. This situation exists in Australia as outlined in the previous section. As a consequence, trades and craftspeople are more likely to use problem solving methods outside an organisation's grievance process to address grievances that they may have, for example, direct negotiation with management. Higher usage of grievance arbitration may instead be required for employees who work in lower skilled

occupations. Lower skilled employees may find they are more likely to have a grievance dismissed because of the shift in labour demand from the lower skilled employees towards work requiring higher levels of clerical and administrative ability (Cappelli & Chauvin 1991).

In view of the preceding discussions addressing the second research question, the following hypothesis is developed for further analyses in Chapter 4. Research question two considers: 'is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration?' The hypothesis to address this question is:

$\boldsymbol{H_5}$ *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

3.4 Research Question Three: Literature Review

The third research question states: 'is there an association between the reason dismissed and the outcome of the arbitration hearing?' The literature review pertaining to the variable, reason dismissed, follows.

3.4.1 Reason Dismissed and Grievance Activity: Previous Research

Three studies relevant to the reason for dismissal and arbitration outcomes conducted by Dalton and Todor (1985b), Bemmels (1990), Chelliah and D'Netto (2006) and Earnshaw and Marchington (2000) are discussed in the following. First, within the context of grievance processes, not all cases present with equal probability of being won. 'Individuals sometimes file over trivial matters' according to Dalton and Todor

(1985a, p. 709). These researchers created two categories of grievances: serious matters and non job threatening. The level of severity of the grievance was found to be a predictive factor for the outcome of both male and female grievants. Bemmels (1990) also found that severity of the charge and the grievants prior behaviour were predictors of the arbitration outcome.

The Chelliah and D'Netto (2006) study of 364 unfair dismissal cases heard by the AIRC from 1997 to 2000 found that behaviour qualifying as 'gross misconduct' such as theft or fraud, increased the odds of a decision in favour of the employer dramatically to nine out of ten. However, other reasons for dismissal, such as unsatisfactory work performance, insubordination, negligence, alcohol related offences, negative attitude and excessive absenteeism were found to *be not* statistically significant predictors of the arbitration outcome.

The Australian study also found that significant predictors of an outcome being in favour of the employee were if the employer did not apply progressive discipline or failed to provide warnings or correctly administer the workplace policies in terms of discipline and dismissal. In support of this finding, a study in the United Kingdom by Earnshaw and Marchington (2000) concluded that employment tribunals only occasionally determined cases on the basis of the reason for the dismissal, and instead suggested that the tribunals used as the deciding factor, whether or not the employer had acted reasonably. This means that in cases where the dismissed employee had a successful claim, rarely was it because the tribunal found that the employer did not have a good enough reason to dismiss the employee. In nearly

every case found in favour of the dismissed employee, the tribunal found the employer to be derelict in the process that they used to dismiss the employee.

Research thus far has not clearly established whether less serious offences are associated with an arbitration outcome. The following hypothesis will be tested on this variable to gather further information on the relationship between reason dismissed and arbitration outcome:

$\boldsymbol{H_6}$ *The reason for dismissal is associated with the arbitration outcome.*

3.5 Research Question Four: Literature Review

The fourth research question states: 'does the aggrieved employee's gender bear association with arbitration outcomes?' The literature review pertaining to the variable, grievant gender follows.

3.5.1 Grievant Gender: Australian Issues

This subsection provides an overview of the gender demographics in Australia's workforce and highlights the large extent to which women are participants. This follows with a discussion that suggests changes in Australia's employment legislation towards individualised bargaining may potentially undermine the ability of women to maintain equitable treatment in the workplace.

The characterisation of Australia's workforce is no longer the typical 'husband supporting a wife and three children' (Ridout 2005). Table 3.2 contains statistics on the gender mix of full time and part time employees in Australian industries.

Noticeably the national totals in Table 3.2 indicate that Australian women are heavily represented in the workplace with only 794,960 fewer women than men and notably nearly double the numbers of the part time workers are female compared to male.

Table 3.2 Gender Mix of Full time and Part Time Employees in Australia

INDUSTRY	NUMBER OF MALES			NUMBER OF FEMALES		
	Part Time	Full Time	Total	Part Time	Full Time	Total
National Totals	916,450	3,630,333	4,546,783	1,773,259	1,978,564	3,751,823

(Source: Australian Bureau of Statistics 2003)

In terms of gender equity, Strachan and Burgess (2001) contend that Australia is going backwards in providing gender equality because recent employment legislation has moved toward individual, direct bargaining and they express the concern that the safeguards provided by collective bargaining and minimum pay and conditions leave women particularly vulnerable. They reject the argument that decentralised bargaining promotes family friendly principles that assist women and workers with family responsibilities to achieve flexibilities not previously available. This combined with the limitations on trade unions to be party to workplace agreements, further expose women to unequal involvement and treatment in the workplace and eroding employment conditions. A report published by the New South Wales Working Women's Centre indicates that 25% of its 2000 plus enquiries between 1995 and 1996 were from women about unfair dismissal (MacDonald 1996). At this point, a hypothesis is contended to test the suggestion that because women are heavily represented in the casual workforce they might ultimately be jurisdictionally

barred from pursuing a claim in the AIRC. The following hypothesis is thus formulated:

H_7 *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

Within Australia, women are heavily represented in the workforce particularly in part time work. The theme that women in the workplace are susceptible to unfair or unequal treatment is not an uncommon topic of debate and research. The following subsection discusses research that would support the suggestion that women are potentially vulnerable to workplace discipline, in a context broader than just the Australian context.

3.5.2 Vulnerability of Women to Discipline in the Workplace

The aim of this subsection is to provide a rationale for the premise that women could be exposed to disciplinary action as a result of potentially less on-the-job learning opportunities and/or lower tolerance for mistakes rather than solely for actions committed by the individual.

First, it is suggested that less learning opportunities afforded to women could increase the likelihood of discipline in the workplace. Cahoon (1991) suggests that the informal culture of organisations, that is the underlying attitudes, values and norms of the workplace, enables the sexual stereotyping that occurs in society to subconsciously pervade the workplace. The sexual stereotypes of western society, as

discussed by Watson and Newby (2005) generally embeds a workplace that is 'highly masculine' with dominant values such as risk taking, goal accomplishment, task achievement, assertiveness and self interest. Cahoon (1991) contends that this institutional barrier (although this barrier may well be unintentional) means women are not as easily able to learn on the job because males tend to be given more 'chances' than females, particularly in the situation where the skill and ability of the employee is unknown. This could influence the opportunities females are given to learn in the workplace and thus they have a higher potential to have work errors exposed (Cahoon 1991).

Second, it is suggested that tolerance towards females for workplace mistakes may also differ to levels afforded to males. Experiments conducted with personnel managers (Larwood et al. in Dalton & Todor 1985b) concluded that females were given less tolerance for making a mistake than males when employed in 'traditional' male roles.

Based on these findings, it could be reasonable to propose that women are potentially exposed to workplace discipline (that could well result in termination of employment) as a result of what may be perceived as higher error rates or less efficiency than their male counterparts. It could be the case that females are terminated because of perceptions of less efficiency when in reality it may be that they have less learning opportunity or are afforded less tolerance for mistakes as a result of informal organisational values.

The above subsection has commenced to establish a premise for testing in Chapter 4 whether there are gender differences in arbitration outcomes because the additional challenges that women face with error tolerance, learning opportunities and less stable employment. The next subsection considers the potential effect of the grievant's gender on arbitration outcomes.

3.5.3 Grievant Gender and Grievance Activity: Previous Research

As part of investigating the gender effects on grievance arbitration, researchers have looked towards criminology research concerning the criminal judge's treatment of a defendant's gender when sentencing in the criminal court. Research into criminal justice proceedings tend to be concluding that it can be expected that the defendant's gender will affect the court's decision with women getting less tough punishments (Bemmels 1990; Dalton & Todor 1985b). Within the context of grievance arbitration, research into the impact of the grievant's gender on the arbitration finding returns mixed results.

Bemmels (1990, p. 60) researched the impact a grievant's gender has in 'discharge (dismissal) arbitration' and although finding no support for gender effects suggested:

> *'In practice, discharge arbitration involves a hearing where the grievant generally gives testimony. Thus the grievant's gender is observed by the arbitrator first hand in face-to-face contact. Merely reading a grievant's name and pronouns indicating his/her gender may not elicit the same gender related biases from an arbitrator as would face-to-face contact.'*

Caudill and Oswald (1992) challenged Bemmels findings and found significant support in their calculations that female grievants were treated more leniently than male grievants. Because of the mixed findings, Bemmels also joins the chain of

authors recommending further study to determine the presence, if any, of gender affects in arbitrator's decision making.

Continuing with the suggestion that the genders are treated differently within the context of grievance arbitration it is worthwhile to consider the work of British researchers, Knight and Latreille (2001). This research into gender differences in unfair dismissal arbitration uncovered that female applicants are more likely to be successful than male applicants when pursuing claims of unfair dismissal by their employers. Interesting though is their finding that financial compensation, when granted to successful applicants, is similar across men and women. As this was not a causal study into why women had a higher success rate at tribunal hearings, Knight and Latreille (2001) suggest further research is required to determine whether this is an indication that women are being treated worse in the workplace or whether the arbitrator is biased. Dalton and Todor (1985b) had also earlier found that females are 50% more likely to have a successful grievance claim than males. However, in 1986, Dalton, Owen and Todor reassessed this work and stated there is no statistical difference between male and female grievants in the outcomes of their grievance hearings, be it win, lose or compromise and indicated that the continued ambiguity of results warrants further examination in this area. In view of the preceding discussion, a second hypothesis is developed for further analyses in Chapter 4 in relation to the aggrieved employee's gender and the likelihood of receiving a favourable or not favourable outcome:

H_8 *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

3.6 Research Question Five: Literature Review

The fifth research question states: Does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims?' The literature review pertaining to the variable, arbitrator gender follows.

3.6.1 Arbitrator Gender: Australian Issues

Section 2.2.5 debated the issue of bias in the AIRC in terms of commissioners showing favour towards the employer or employee. This research question addresses the issue of the gender of the commissioner and whether this is associated with favouritism towards male or female grievants. In the history of the AIRC 20 females have been appointed to the bench, the first appointment occurring in 1973 (Australian Industrial Relations Commission 2006a). During the data sampling timeframe (2004 and 2005) 11 female commissioners were involved in arbitrating unfair dismissal cases, compared to 48 male commissioners for the same time period.

3.6.2 Arbitrator Gender: Previous Research

This thesis considers that a different arbitrator (or as is the case in Australia, a commissioner) hearing a grievance could return a different grievance outcome. Klass and Feldman (1994, p. 93) suggested that decision makers in the grievance process are not consistent in how they respond to allegations, 'possibly due to variation in personal beliefs across decision makers in how much evidence is required for a guilty verdict'. This statement highlights the potential that individual personal practices can influence the arbitrator's decision making. If the potential for variations in arbitration decisions on the grounds of personal experience, beliefs and

practices is recognised, it is logical to investigate whether an arbitrator's gender might correlate with either favourable or unfavourable arbitration decisions.

Earlier research by Bemmels (1990) into arbitrator characteristics indicate little support for a relationship between arbitrator characteristics and their decisions. The characteristics that were included in this research were the arbitrator's gender, education; experience and employment background. It was concluded that arbitrators' decisions are completely 'arbitrary' in themselves. In short, Bemmels' methodology was to present the sample arbitrators with a 'case study' adapted from a discharge case and the arbitrators completed a questionnaire indicating how they would decide the case. The results revealed a 'weak' difference between male arbitrators giving more favourable treatment to female grievants than the treatment towards male grievants. The decisions made by the arbitrators in the study were wide and varied but it was generally found that the arbitrators' characteristics explained little of the variations in their decisions.

However, a slightly later study by Bemmels (1991b) did find that male arbitrators tended to give more lenient penalties to female grievants, whilst it also found that female arbitrators showed no difference in their decisions on male or female grievants. Although statistically significant results were identified in the later study, Bemmels (1991a) contends that gender effects held less impact on the treatment of the grievant than other factors which include the offence committed and the grievant's disciplinary record. However, Bemmels (1991b) still cautioned that if females are being treated more leniently by male arbitrators, employers might be reluctant to discipline female employees.

A similar finding is that of Dalton and Todor (1985a). This study considered the common practice of the grievant being represented by a union official, and thus it tested for differences in grievance outcomes as a function of the gender composition of 'adjudicators' of a grievance, specifically the union officials and company representative who settled the grievance. The strongest result in this study was that female company representatives interacting with male union representatives were less likely to decide in the grievant's favour. In other words, where a female company representative has the role of presiding over a workplace grievance, they are tougher than their male counterparts, when they are petitioned by male advocates. Although it is acknowledged that these results must be tempered with the severity and viability of the grievance, the authors suggest that 'workplace justice outcomes are systematically related to the gender composition of those individuals charged with hearing cases' (Dalton & Todor 1985a, p. 709).

In view of the above discussion, the following two hypotheses will be addressed in Chapter 4 in consideration of the fifth research question: Does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims?

***H*$_9$** *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

***H*$_{10}$** *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

3.7 Chapter Three Summary

This third chapter opened by revisiting the research objective and related questions which led to the presentation of a concept map which diagrammatically outlined the nature of this research. It is intended that the concept map provides clarity on the intention of this research which is to determine whether inherently present industry and occupational factors; the reason that triggered the grievance; and the genders of both the grievant and arbitrator; bear any association with the outcomes of an arbitrated grievance. Subsequent to the explanation of the concept map, a review of the literature was conducted on each independent variable.

First, it was concluded that industries dominated by small and medium size business and those in the service related industries, such as accommodation, hospitality were exposed to higher levels of grievance activity. It was also considered that employees in smaller business and service type industries are prone to high levels of grievance activity because of lower levels of human resource expertise employed within them.

Second, the discussion in relation to occupation culminated in a deduction that employees working in lower skilled occupation are under pressure to up skill to meet the demands for clerical and higher level skills. In the event they access grievance procedures, it was considered that perhaps lower skilled employees are treated with less tolerance than higher skilled and professional level employees.

Third, the potential association that the reason for the grievance has in relation to the outcome of an arbitrated grievance was considered and it was discussed that conflicting findings have been uncovered in preliminary research on this relationship.

The final two characteristics explored in this chapter pertain to gender, that of the grievant and that of the arbitrator. In terms of the grievant's gender, it was discussed that females may be in a more vulnerable position in the workplace compared to males and thus initiate grievance processes more frequently but at the same time, based on previous research findings, have higher success rates. The gender of the arbitrator was then addressed in which initial studies have provided ambiguous results pertaining to the gender of arbitrators and their decisions.

With the objective of this study being ***to examine the association between inherent characteristics of unfair dismissal arbitration cases and consequent arbitration decisions,*** ten hypotheses were developed and presented throughout the discussions in this chapter and are recounted below:

$\boldsymbol{H_1}$ *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

$\boldsymbol{H_2}$ *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

$\boldsymbol{H_3}$ *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

$\boldsymbol{H_4}$ *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

H_5 *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

H_6 *The reason for dismissal is associated with the arbitration outcome.*

H_7 *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

H_8 *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

H_9 *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

H_{10} *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

These ten hypotheses guide this research through the remaining chapters. The next chapter outlines the research methodology employed to undertake the research and presents the results of the empirical analysis.

CHAPTER 4

RESEARCH METHODOLOGY

4.0 Introduction

This chapter details the research methodology used in this study. This involves locating the study within its research paradigm, identifying the research purpose, through to sourcing, collecting, analysing and interpreting data. Researchers have at their disposal a continuum of research paradigms, each with their own rules and assumptions. Depending on the chosen paradigm the design of the research will vary.

The first section of this chapter outlines the positivistic paradigm used in this research. The second section describes the generally descriptive nature of the research. Secondary analysis is used as the research method and it is outlined in the subsequent section. The remainder of the research methodology discussion is devoted to outlining the data sourcing and collection methods. This includes an explanation of the classification process for each of the variables, a discussion of the non-parametric analysis used to interpret the data and reliability and validity issues.

4.1 The Research Paradigm

The methodology of this research is located within the positivistic paradigm. Positivist research describes research aimed at measuring a ‘pre-existing reality’ whereby the researcher remains distant, neutral and, unlike a post-positivist researcher, does not become an ‘instrument’ or channel in the research process (Collis & Hussey 2003, p. 295). With the data source for the research being

electronically available documents, this study typifies research wherein the researcher conducts the investigation in isolation from the events being explored.

Several key points are commonly used to distinguish positivistic 'quantitative' research from that of the post-positive or 'qualitative' paradigms, and drawing on the writing of Collis and Hussey (2003) these points are now briefly applied to this research project to demonstrate its alignment to a positivistic approach. First, positivistic research produces quantitative or 'precise' data which, for this study, occurs in the collection of frequency counts for each the study's variables.

Second, a 'large' sample is used from which findings are generalised to the population. This is in opposition to much smaller samples, such as one or two case studies typically used in post-positive research (Collis & Hussey 2003). This project involves a two year sample of arbitration decisions, totalling 384 cases. This research further relies on the use of statistical inference to generalise from this sample to the Australian population.

Whilst all research paradigms have the common aim to explain a phenomenon, the positivistic paradigm uses the quantitative data collected in its process to test a hypothesis using statistical analysis. An hypothesis is a logical proposition providing a tentative explanation for a phenomenon (Leedy & Ormrod 2001). Hypothesis development involves deductive reasoning whereby the formulated hypothesis for empirical testing has been founded in previous research (Cavana, Delahaye & Sekaran 2001; Leedy & Ormrod 2001) on issues relevant to the research questions. This study analyses 10 statistically testable hypotheses formulated on strengths and

weaknesses found in the literature pertaining to each of the variables. The end result of positivist research is that a hypothesis is either supported or not supported, both of which contribute to a further understanding of a phenomenon. Here, the point of difference with a post-positivist paradigm is that a post-positivist researcher aims to generate a theory or organised body of concepts (Leedy & Ormrod 2001) from the rich but subjective data collected in its process.

4.2 The Type of Research

Business research methodology texts generally classify research into four types when describing the purpose of conducting the research: exploratory; descriptive; explanatory (or analytical) and predictive (Cavana, Delahaye & Sekaran 2001; Collis & Hussey 2003; Leedy & Ormrod 2001). This project with its research objective *to examine the association between inherent characteristics of unfair dismissal arbitration cases and consequent arbitration decisions*, is both exploratory and descriptive in nature. Exploratory studies develop initial hypotheses about a phenomenon with a view to providing foundations for future study that may be of a predictive nature. For this reason alternative hypothesis are developed from the available literature, albeit of a limited nature in some areas, for statistical testing. The descriptive element of the study results from its aim to identify relevant characteristics of a group in a given situation (Cavana, Delahaye & Sekaran 2001; Collis & Hussey 2003), with its focus on analysing industry, business size, skill and gender related features on arbitrated unfair dismissal grievances. The research reported in this thesis is delineated from explanatory or predictive research as it does not involve measuring causal relationships between the dependent and the various

independent variables, nor controlling or manipulating variables (Collis & Hussey 2003) in the pursuit of understanding why a phenomenon occurs.

4.3 The Research Method: Secondary Analysis

Suitable to the neutral and distant approach of the researcher with a positivist philosophy, the research method used in this study involves unobtrusive measures to collect information. Unobtrusive measures have the advantage of reducing bias during the collection of data because there is no direct intrusion by either the researcher or a measurement instrument (Trochim 2006). More specifically, this study uses 'secondary analysis' which is similar to a content analysis in that it makes use of existing sources of data, however in secondary analysis, one analyses quantitative data rather than textual details as analysed in a content analysis (Trochim 2006). Secondary analysis generally relies on combining information from multiple databases such as routine information collected by governments, business and so forth (Trochim 2006). In this research, the secondary analysis is used specifically to analyse factual, explicit data from AIRC decisions which are documented as a matter of public record.

4.4 The Target Population

The population for this study are arbitration decisions that reflect people who have sought remedy through the AIRC in the belief that their dismissal was harsh, unjust or unreasonable according to the definitions in the Workplace Relations Act 1996. This study targets decisions pertaining to the time period January 2004 to December 2005 because this is the last full two year's worth of decisions, prior to the 2006

Workplace Relations Act amendments that restricted dismissal applications from employees in business of less than 100 workers.

This research focuses on the first round arbitration decisions made by a single commissioner over an unfair dismissal claim. To find out information about people unsuccessfully attempting to access the Commission's services, included in the collection were unfair dismissal claims that were rejected by the commissioner for being outside jurisdiction of the AIRC. Specifically, these were cases where the commissioner found the employee was a trainee, apprentice, short term casual or on probation and employees who, believing they had been dismissed, had in fact surrendered their employment contract through a resignation.

Decisions that were discarded in sourcing the data included appeals made against arbitration decisions, which are heard by a Full Bench. An analysis of Full Bench appeals could well serve a further study. Also excluded at the point of identifying applicable cases for data collection were 'out of time' cases. This means that an employer has successfully argued that the grievant lodged the application for an unfair dismissal hearing more than 21 days after the termination took place (Australian Industrial Relations Commission 2006b). This study did not capture 'out of time' applications because there is insufficient detail in the decisions regarding the actual dismissals to enable accurate data capture. Finally, cases that involved non-award employees or high income earners were also discarded, for example, in 2006 the total annual remuneration package was capped at $98,200 (Australian Industrial Relations Commission 2006b). It is noted that there where limited occurrences of this nature and once again, the decisions contain only scant details.

Furthermore, a number of arbitration decisions are made by the AIRC under the unfair dismissal provisions of the Act that are of an 'administrative' nature. For example, there are times when the Commission finds that a case is out of its jurisdiction because the person was an independent contractor. Occasionally, the Commission suggests that the parties undertake further conciliation. These decisions were discarded because the focus of this research is the analysis of first round arbitration decisions, uncomplicated by administrative legalities, resulting in a decision that either favoured the applicant by way of reinstating and or compensating him or her; or alternatively dismissed the applicant's case on the merits of the employer (respondent's) case.

A final point of clarification regarding the target population is that this study does not cover *unlawful* termination. Unlawful termination occurs when a contract is terminated for discriminatory reasons (such as age, gender, family status, religious beliefs) (Australian Industrial Relations Commission 2003a). The target population are those people seeking arbitration on *unfair dismissal* which occurs when a dismissal was harsh, unjust or unreasonable (Australian Industrial Relations Commission 2003a).

4.5 Data Source and Sample Size

The main data for this secondary analysis is available on the AIRC's website where it publishes the full text of its decisions made since July 2000. Applicants (that is dismissed employees) are advised by the AIRC that generally, arbitration proceedings are held in public and decisions are public documents and that decisions

will be published on the AIRC website (Australian Industrial Relations Commission 2003a).

The data was accessed by initially printing a list of all decisions made by the AIRC between 1 January 2004 and 31 December 2005 (this list contained over 2,000 entries). From this list, 505 decisions were identified as being related to termination of employment or dismissal. These decisions were viewed online to determine whether they matched the criteria outlined previously in Section 4.4. This process yielded 384 relevant decisions which were printed in readiness for data collection. Based on Leedy and Ormrod's (2001) suggestion that a population of over 500 is well served with a 50% sample (that is, 250 responses) it is considered that the number of cases analysed in this study (384) is more than sufficient to undertake the study. Table 4.1 provides the final count of cases pertaining to each of the variables and the number of missing data for each variable.

Table 4.1 Valid and Missing Data Count for each Study Variable

Variable	***Number***	
	Valid	***Missing***
Arbitration Decision (dependent variable)	384	0
Jurisdictional Barriers	384	0
Industry Sector	384	0
Business Size	226	158
Human Resource Expertise	311	73
Occupational Skill Level	365	19
Reason Dismissed	384	0
Gender of Aggrieved Employee	384	0
Gender of Arbitrator	384	0

Table 4.1 shows that the variable with the most missing data was 'business size' with 158 (41%) values missing leaving this variable with a sample size of 226 responses. It is argued that missing values for both business size and human resource expertise is random and 'ignorable' missing data that has occurred as a result of the techniques used to collect the data on these variables and do not reflect patterns in the population (Hair et al. 1998). The negative affect of this type of missing data is that it reduces the sample size (Hair et al. 1998). However, with a sample of 226 for the 'business size' variable it is not beyond a useable sample size to run statistical tests. The remaining variables well surpass Leedy and Ormrod's (2001) 250 sample size suggestion.

4.6 Data Classification

Data were collected by reading each decision and completing a coding sheet (Neuendorf 2001) for manual data entry into SPSS. A sample coding exercise was initially conducted on a random sample of fifty decision summaries to test and edit the design of the coding sheet. Unambiguous content such as the industry in which the applicant worked; the size of the business; the type of work performed; the applicant's gender; reason dismissed; and arbitration decision was collected and classified according to the tables provided in subsections 4.6.1 to 4.6.7.

4.6.1 Independent Variable: Industry Sector (pertains to research question 1)

The type of industry in which the employment relationship occurred was initially coded according to the 17 industries identified in the Australian and New Zealand Standard Industrial Classification (ANZSIC). However, frequency counts in some of

the industries were insufficient to perform sound statistical analysis on all 17 industries and it was necessary to combine these classifications into three major sectors: a product related sector; a trade related sector; and a services related sector. Table 4.2 demonstrates both the ANZSIC classification and their subsequent grouping into three sectors for the purposes of this study. The reasons for this tri-sector grouping are as follows.

First, the product related sector incorporates industries involved with *tangible* products. Von Stamm (2003, p. 295) describes product based industries as those which have the benefit of being able to 'manufacture in advance and put into inventory' the goods for which the business operates. In this definition, the term 'manufacture' extends to industries that not only value-add through a refining, manufacturing, or building process, but also primary industries involved in producing raw materials.

Second, the service related sector was formulated on the basis that the Australian Bureau of Statistics (ABS) defines service industries as those that provide a *service* as a final product to consumers, such as services provided by banks, doctors, cafes and restaurants, or provide intermediary input such as accounting services (Australian Bureau of Statistics 2007b). The service sector is also recognised as a context for business opportunities and research and a number of definitions of service industries occur in the academic literature. One such definition being industries where the product is consumed upon delivery, is intangible and contains 'no possibility to manufacture in advance' (von Stamm 2003, p. 295).

Third, the 'trade related' sector was allocated on the basis that whilst the ABS definition of service industries incorporates wholesale and retail trade, the Australian Labour Market Statistics 2006 report (Australian Bureau of Statistics 2006) reveals that retail trade is the largest employing industry of all 17 industries in the ANZSIC classification. This report showed that the wholesale and retail trade industries combine to employ 1.954 million persons out of a 10.142 million workforce. It was also found that the wholesale and retail trade were combined and addressed as an industry separate from other service industries in the Callus et al. (1991) analysis of Australian industry and workplace relations. Thus the two industries related to trade are analysed as a sector in its own right in this study.

Table 4.2 ANZSIC Industry Categories grouped into Three Sectors for Analysis

ANZSIC Category *(as per initial data collection)*	***Examples of Industry Activities***
PRODUCT RELATED SECTOR (used in final analysis)	
Agriculture, Forestry, and Fishing	Horticulture and fruit growing; grain, sheep and beef cattle farming; dairy cattle farming; poultry farming; other livestock farming; other crop growing; services to agriculture; hunting and trapping; forestry and logging; marine fishing; aquaculture
Mining	Coal mining; oil and gas extraction; metal ore mining; construction material mining; exploration; services to mining
Manufacturing	Meat and meat product manufacture; dairy product; fruit and vegetable processing; oil and fat manufacturing; flour mill and cereal food; bakery product; other food manufacturing; beverage and malt; tobacco product; textile fibre, yarn and woven fabric manufacturing; textile product; knitting mills; clothing; footwear; leather and leather product; log sawmilling and timber dressing; other wood product manufacturing; paper and paper product; printing and services and printing; publishing; recorded media manufacturing and publishing; petroleum refining; petroleum and coal product manufacturing n.e.c.; basic chemical; rubber; plastic; glass; ceramic; cement; lime; plaster; concrete product; non-metallic mineral product; iron and steel; non-ferrous metal and non-ferrous metal product; structural metal; sheet metal and sheet metal product; fabricated metal product; motor vehicle and parts; other transport equipment; photographic and scientific equipment; electronic equipment; electrical equipment and appliance; industrial machinery and equipment; prefabricated building; furniture; other manufacturing.

ANZSIC Category *(as per initial data collection)*	*Examples of Industry Activities*
Electricity, Gas and Water Supply	Electricity supply; gas supply; water supply.
Construction	Building construction; non-building construction; site preparation services; building structure services; installation trade services; building completion services; other construction services
TRADE RELATED SECTOR (used in final analysis)	
Wholesale Trade	Farm produce; mineral, metal and chemical; builders supplies; machinery and equipment; motor vehicle; food, drink and tobacco; textile, clothing and footwear; household good; other wholesaling
Retail Trade	Supermarket and grocery stores; specialised food; department stores; clothing and soft good retailing; furniture, houseware and appliances; recreational goods; other personal and household goods; household equipment repair services; motor vehicle; motor vehicle services.
SERVICE RELATED SECTOR (used in final analysis)	
Accommodation, Cafes and Restaurants	Accommodation; pubs, taverns and bars; cafes and restaurants; clubs (hospitality)
Transport and Storage	Road freight; road passenger; rail; water; air and space; other transport; services to road transport; services to water transport; services to air transport; other services to transport; storage
Communication Services	Postal and courier; telecommunication
Finance and Insurance	Central bank; deposit taking financiers; other financiers; financial asset investors; life insurance and superannuation funds; other insurance; services to finance and investment; services to insurance
Property and Business Services	Property operators and developers; real estate agents; non-financial asset investors; machinery and equipment hire and leasing; scientific research; technical services; computer services; legal and accounting services; marketing and business management services; other business services.
Government Administration and Defence	Government administration; justice; foreign government representation; defence
Education	Pre-school; school; post-school; other education
Health and Community Services	Hospitals and nursing home; medical and dental; other health services; veterinary services; child care services; community care services
Cultural and Recreational Services	Film and video; radio and television; libraries; museums; parks and gardens; arts; services to the arts; sport; gambling services; other recreation services.
Personal and Other Services	Personal and household goods hiring; other personal services; religious organisations; interest groups; public order and safety services; private households employing staff.

(Adapted from: Australian Bureau of Statistics, 1993 Australian and New Zealand Industrial Classification (ANZIC), Commonwealth of Australia)

Information pertaining to the frequency counts according to the initial ANZSIC classification are located in appendix one. Frequency counts for the regrouped categories are provided as part of the results of the data analysis following in Section 4.10 Results of Statistical Analysis.

4.6.2 Independent Variable: Business Size (pertains to research question 1)

A number of the arbitration decisions included information about the size of the business. This is because commissioners of the AIRC are required under Section 170CG(3)(da) of the Workplace Relations Act 1996, when arbitrating whether a termination was harsh, unjust or unreasonable to consider: '*the degree to which the size of the employer's undertaking, establishment or service would be likely to impact on the procedures followed in effecting termination'*. As a consequence, a reference to the size of the employer, in terms of number of staff employed appears in many of the cases as part of the commissioner's deliberations.

For example, in *Habachi vs City of Melbourne* (2005), Commissioner Grainger mentions 'As at 30 June 2005, COM has 1,105 employees and employs qualified human resources expertise and these provisions do not require to be taken into account in this matter'. In *Belic vs Air Direct Transport* (2005), Commissioner Grainger states 'Direct Air employs about 20 people and may be characterised as a small employer'. And, as a final example, Commissioner Lloyd, in *Papegeorgiou vs McKinnons Decorative Finishers* (2005), states, 'Alliance Painting Services is small to medium sized firm that in November 2004 employed about 25 painters'.

Secondly, the process of checking each of the respondent's names on the *Australian Business Who's Who* provided another avenue for collecting data on the size of the employer's establishment. This database contains records of 'medium and large' size firms in Australia. Compilers of the Who's Who database, Dun & Bradstreet (Australia), state that a company must meet two of the following three criteria to be included in the data base: own assets of over $5 million; employ greater than 50 staff; and/or make an annual turnover of over $10 million (Dun & Bradstreet (Australia) 2005). Even though the criteria for inclusion in this database were not directly aligned to the SME business size definition used in the study, it did provide evidence of business size on a number of occasions by providing employee numbers for the organisations listed on its database.

Table 4.3 displays the business size categories initially collected according to the number of employees, and then, for the purposes of performing suitable data analysis, how they were combined to form the three business categories discussed in the data analysis: small, medium and large. These categories align as closely as possible to the Australian Bureau of Statistics' (2002) definition of small businesses employing up to 19 staff, medium size enterprises employing between 20 and 199 people, and large business accounting for any business employing over 200 staff.

Table 4.3 Business Size Classification for Analysis

<table>
<tr><th>Number of Employees
(as per initial data collection)</th><th colspan="2">Business Category
(used in final analysis)</th></tr>
<tr><td>1 to 10
11 to 25</td><td>Small business</td><td rowspan="2">Also known as Small/medium enterprises (SMEs)</td></tr>
<tr><td>26 to 50
51 to 100
101 to 200</td><td>Medium business</td></tr>
<tr><td>201 to 500
501 to 1000
1001 to 10,000
Over 10,000</td><td colspan="2">Large business</td></tr>
</table>

Information pertaining to the frequency counts according to the initial data collection on number of employees are located in appendix one. Frequency counts for the regrouped categories are provided as part of the results of the data analysis following in Section 4.10 Results of Statistical Analysis.

4.6.3 Independent Variable: Human Resource Expert (pertains to research question 1)

The existence of human resource expertise was assembled from a number of avenues. The majority of the decisions record this information. This is because commissioners are required under Section 170CG(3)(db) of the Workplace Relations Act 1996, to consider: '*the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting termination'* when arbitrating whether a termination was harsh, unjust or unreasonable. As a consequence, a reference to the existence of dedicated human resource expertise appears in many of the cases as part of the commissioner's deliberations.

Many decisions list the witnesses and their position. For example, in *Cameron and North Goonyella Coal Pty Ltd* (2004) heard by Commissioner Richards, states, 'The respondent's only witness was Mr Richard Williams Reid (Human Resource Manager).' In addition, references are often made by the commissioner in their decisions about the human resource practitioner. For example, in *Follett v EDS (Services) Pty Limited* (2004), the only reference that the employer had HR expertise was found in the following statement by the commissioner when summarising the facts and evidence. In it, Commissioner Cargill states 'There is an exchange of e-mails between the applicant and the various Human Resources personnel about this mater at Exhibits Applicant 27 and 28'. As another example, in *Collier vs Palm Springs (NSW) Pty Ltd* (2004), Senior Deputy President Duncan mentions 'evidence in support of the respondent's position was given by Ms S. Oriander, manager, human resources of the respondent'. And, as a final example, in *De Santis vs MWT Australia* (2004), Commissioner Simmonds states:

> *Ms Carney was cross-examined by Mr McDonald, for the applicant, about the way in which the second agreement was drawn up. She said that the agreement had been created by the respondent's human resources person and that she had no input in its creation.*

Occasionally, the same respondent is involved in a hearing and the earlier case contains information about the presence of HR expertise. For example, the previously cited case involving North Goonyella Mines Pty Ltd as the respondent, contained the information on dedicated HR that was also applied to the *Milburn vs North Goonyella Coal Mines Pty Ltd* heard by Commissioner Bacon.

Finally, the process of checking each of the respondent's names on the Australian Business Who's Who provided another avenue for collecting data on the presence of

a human resource department within an organisation. It is standard for the data base to list the CEO and other prominent positions within a company. Quite frequently this list also includes the name of the organisation's human resources director or manager.

Collectively, most of the cases were assigned a code to indicate whether or not an organisation had inhouse human resource expertise. In 73 cases (19.1%), this information could not be found through the avenues listed below. It is strongly suspected that this 19.1% account for micro and family businesses that which are not listed on the Business Who's Who database because of the size of their enterprises.

4.6.4 Independent Variable: Occupational Skill Level (pertains to research question 2)

Occupational groups for this study were determined using the Australian Bureau of Statistics standard classification of occupations (ASCO) (1997). This nine level classification uses skill level and skill specialisation as the primary criteria for classifying occupations. The major groups are differentiated from each other according to formal education, training, and previous experience usually required for an occupation (Australian Bureau of Statistics 1997). It was found that low frequency counts occurred in several of the individual categories and to ensure sound data analysis, the categories were reduced from nine categories to three logical categories: higher skilled; intermediate skilled; and lower skilled.

Table 4.4 demonstrates both the ASCO classification and their subsequent grouping for the purposes of this study.

Table 4.4 ASCO Occupational Skill Categories grouped into Three Levels for Analysis

ASCO Category	*Typical Tasks*	*Occupational Examples*
HIGHER SKIILLED OCCUPATIONS (used in final analysis)		
Managers and Administrators	• Formulate, administer, review policy & legislation • Control, direct, participate in activities personally or through hierarchy of managers and supervisors • Establish operational and administrative procedures and allocate resources	Legislators, judges; general managers, resource managers, process managers, sales and marketing managers, child care co-ordinators
Professionals	• Research to extend body of knowledge in their field • Develop techniques to apply knowledge • Identify, treat, advise in area of expertise • Teach students in a range of institutions • Communicate through language, communication media & artistic media	Engineers; accountants; librarians, computing professionals, doctors, teachers, chemists; musicians psychologists, economists, solicitors, photographers, scientists; journalists; pilots
Associate Professionals	• Conduct scientific tests & experiments • Administer operational activities of an office or financial institution • Organise retail, hospitality and accommodation operations • Assist professionals in the provision of support and advice to clients • Maintain public order and safety • Inspect for compliance with government and industry regulations • Co-ordinate supports training and participate in sporting events	technical officers, financial advisors, chefs, restaurant , hotel and shop managers, hospitality managers, enrolled nurses; police officers; social welfare workers; paramedics; dental associates; massage therapists; sport managers; senior fire fighters; retail buyers
INTERMEDIATE SKILLED OCCUPATIONS (used in final analysis)		
Tradesperson and Related workers	• Fabricate, repair and maintain metal, wood, glass and textile products • Repair and maintain motor vehicle, electrical, electronic equipment • Construct buildings, ships, boats • Operate printing equipment; • Operate chemical, gas, petroleum & power plants and equipment • Prepare and cook food	hairdressers, toolmakers; motor mechanic; electrician; wood tradespersons, plumbers, sign writers; bricklayers; plasterers; pastry cooks; butchers; screen printers; jewellers; florists; defence force members; clothing related trades; gardeners, greenkeepers
Advanced Clerical and Service workers	• Perform secretarial and other administrative tasks • Record and maintain financial, credit and insurance information • Record proceedings of meetings and hearings • Compile documents, texts and technical information for distribution and publication	secretaries, personal assistants, bookkeepers; loans officers; insurance agents; court reporters; desktop publishers

ASCO Category	*Typical Tasks*	*Occupational Examples*
Intermediate Clerical and Service workers	• Operate a keyboard, provide information; produce and record basis financial and statistical information; • Record details of production, transport, storage • Purchase goods • Selling goods to wholesale and retail establishments • Supervising retail staff • Organise travel and accommodation • Assist teachers and provide childcare, personal and basic nursing services • Provide services to customers in hospitality industry	general clerks; keyboard operators, receptionists, payroll clerks; bank clerks; purchasing clerks; accounting clerks; library assistants; sales representative; retail supervisors; child care workers; waiters; dental assistants; gaming workers; fitness instructors; travel agents; prison officers
Intermediate production and transport workers	• Set up, control and monitor the operation of mechanical equipment • Drive road and rail transport vehicles • Drive mobile plant to worksites • Clean and perform minor repairs to equipment • Keep production records	mobile plant operators, forklift drivers; crane, hoist and lift operators; sewing machinists; production machines operators; photographic developers; truck, bus, tram, taxi, train drivers, miners; storepersons; loggers
LOWER SKILLED OCCUPATIONS (used in final analysis)		
Elementary clerical, sales and service workers	• Receive, process and despatch information, mail and documents • Provide telecommunication services • Sell goods and services in retail and wholesale stores • Provide basic services to customers with information, entertainment, security, personal and domestic requirements	sales assistants, filing clerks; mail sorting clerks, switchboard operators; betting clerks; checkout operators and cashiers; telemarketers; ushers; guards; housekeepers.
Labourers and related workers	• Clean premises and machinery • Assist tradespersons • Load, move, unload and pack materials • Assemble components and perform manual manufacturing and construction tasks • Assist in cultivation and production of plants and animals	cleaners, kitchen hand; farmhands; fast food cooks; garbage collectors; trade assistants; handypersons.

(Adapted from Australian Bureau of Statistics, 1997 Australian Standard Classification of Occupations (ASCO), 2nd ed, Canberra)

Information pertaining to the frequency counts according to the initial ASCO classification are located in appendix one. Frequency counts for the regrouped categories are provided as part of the results of the data analysis following in Section 4.10 Results of Statistical Analysis.

4.6.5 Independent Variable: Reason for Dismissal (pertains to research question 3)

The reasons employers provide to AIRC commissioners for dismissing staff are wide and varied. In this study, these reasons are placed into four categories. The continuum is based on how much of the termination was as a consequence of the employee's actions and ranges from conduct that was considered so disruptive that immediate termination was considered necessary, through to redundancy, a form a termination that is not a direct consequence of the employee's behaviour or performance. The fourth category is a catch-all for those reasons that do not clearly identify with any of the preceding three categories. Table 4.5 provides further details on each of these categories.

Table 4.5 Reasons for Dismissal

Category	*Explanation*
Serious misconduct	Also referred to as 'gross' misconduct, the behaviour of the employee is warranted to have broken the employment contract and can result in summary dismissal. Examples (depending on the circumstances of each case) include wilful disobedience of lawful and reasonable instructions; insubordination and abuse; loss of temper; bad language; carrying out private work in conflict with employment; divulging confidential information; dishonesty (particularly if a senior employee); criminal activity; drunkenness; drugs; brawling, skylarking; wilful damage; gross negligence when performing senior level or professional duties and employer standards have been issued. Although an employee is entitled to an investigation and written notice of dismissal the process of 'warnings' and/or notice periods are not mandatory.
Performance and/or attitude	This category captures the actions of the employee that do not warrant summary dismissal. It covers issues such as incompetence (which is not considered equivalent to an unwillingness to work); minor neglect of duty or an insignificant act of inefficiency in the event that the employee lacks the skill level to perform the work or attitudinal issues in which the employee has not improved after performance counselling and training by the employer.
Employee was made redundant	The employer cites that they terminated the employee because there is no longer any work for the employee because of economic downturn, takeovers, mergers or technological change.

Category	*Explanation*
Other reasons	Constructive dismissal: This can occur in several ways, For example, an employer argues that the employee resigned when in fact it was a forced resignation. It also occurs when an employee resigns because the employer made unilateral changes to, or breached the employment contract, which resulted in the employee feeling there is not alternative and are 'pressured' out of their employment by tendering their resignation.
	Type of Employment contract: The employer cites that they terminated the employee because he/she was engaged on a contract for a specified period or task; or he/she had been engaged as a casual employee for less than 12 months; or he/she was an apprentice or trainee under the National Training Wage Award. These types of employees are outside the jurisdiction of the Act.
	Probationary employee: The employer cites that they terminated the employee during the employee's pre-determined probationary period. Probationary employees of this nature are outside the jurisdiction of the Act.
	Injury or sickness: The employer cites that they terminated the employee because they could not hold their position open due to illness or injury or did not have suitable modified duties for the employee to perform due to illness or injury.
	Other: The employee cites for example, that the employee 'abandoned' his/her employment which occurs when the employee leaves their employment without giving due and proper notice.

(Adapted from: CCH Australia Ltd 2005, *Research Manual of Industrial Law;* Department of Employment and Workplace Relations 2003, *Unfair dismissal and unlawful termination: Wagenet Fact Sheet,* Canberra)

Information pertaining to the frequency counts for each of the eight explanations provided in Table 4.5 are located in appendix one. Frequency counts for the four major categories are provided as part of the results of the data analysis following in Section 4.10 Results of Statistical Analysis.

4.6.6 Independent Variable: Gender (pertains to research questions 4 and 5)

The gender of the aggrieved employee was determined from the text of the decisions where reference was made to 'he/she', 'his/her' when referring to the dismissed employee. The gender of the arbitrator was ascertained by noting the name of the commissioner that appears on each decision. The name was compared with a list provided by personal communication with the AIRC of all female appointments,

which accounted for 11 commissioners from a total of 48 commissioners that presided over the decisions for 2004 and 2005.

4.6.7 Dependent Variable: Arbitration Outcome

This study dichotomises the arbitration outcomes (that is, the decision made by the commissioner) into those which are favourable to the aggrieved employee, and those which are not favourable to the aggrieved employee, which, in default are favourable to the employer. Within these two categories variations can occur, the most common examples are provided in Table 4.6.

Table 4.6 Arbitration Outcomes

Decision	Consequence
In favour of the employee	Reinstatement means that the Commission has found the employer unfairly dismissed the employee and orders the employee to be returned to the same position held before the dismissal. Re-employment means the Commission has found the employer unfairly dismissed the employee and ordered that the employee be re-employed by the employer (although not the same position). Compensation means that the Commission finds the employer unfairly dismissed the employee and ordered compensation where reinstatement or re-employment is not practical. The amount of compensation is calculated based on lost remuneration. Costs may be ordered against the employer if the Commission finds the employer acted unreasonably by not settling the claim or due to an unreasonable act or omission in connection with the conduct of the proceedings by the employer. The employer pays the dismissed employee's legal costs.
Not in favour of the employee	Case dismissed because the Commission found in favour of the merits of the employers case. Costs may be ordered against the dismissed employee if the Commission finds that the employee was acting vexatiously or continued the claim with no reasonable prospect of success or due to an unreasonable act or omission in connection with the conduct of the proceedings by the employee. The dismissed employee pays the employer's legal costs.

(Adapted from: Australian Industrial Relations Commission 2003, *Termination of Employment - General Information Guide*, Commonwealth of Australia; CCH Australia Ltd 2005, *Research Manual of Industrial Law*)

4.7 The Data Interpretation Method: Non Parametric Tests & Chi Squares

The nature of the data collected on each of the variables in this research is categorical or 'count data'. (A spreadsheet of the raw data collected on each of the variables is provided in Appendix Two.) The calculation of means and standard deviations to determine parameters for the data is not possible with categorical data thus it precludes the use of parametric analysis. This type of data requires non-parametric testing. Whilst parametric tests rely on detecting changes to the mean or another parameter to identify relationships between variables, non-parametric tests analyse changes in *distribution* between groups (Kemp & Kemp 2004). For example, in this study, the non-parametric tests assess whether the intervention of each of the independent variables (industry, business size and so forth) affect the distribution of favourable versus unfavourable arbitration outcomes.

It is noted that non-parametric tests have less 'power' than parametric tests. When analysing the same number of cases (*N*) a non parametric test has less ability to detect associations between the dependent variable and the independent variables than a parametric test (Kemp & Kemp 2004). This suggests that a non parametric test, because it is more conservative, is less likely of a Type I error (that is, rejecting the null hypothesis when the null is the correct hypothesis) because the test is more likely to retain a null hypothesis. Type I errors are more important to avoid than Type II errors (Kemp & Kemp 2004) because Type I errors can result in a researcher advancing incorrectly our understanding of a phenomenon by concluding a relationship exists when it does not in reality.

A suggested drawback to a non parametric test is that it is more prone to a Type II error (Zikmund 2003) than a parametric test. This is because its lower power makes it less efficient at detecting values to enable the acceptance of the alternative hypothesis over the null when the results are close. The occurrence of Type I and Type II errors is counteracted through the use of larger sample sizes when performing non parametric tests (Zikmund 2003) and using the probability value '*P*-value' to ensure conservative retention or rejection of a null hypothesis (Kemp & Kemp 2004). The *P*-value represents the likelihood that a result of the statistical test is due to random behaviour or chance. Its value decreases as 'chance' findings decrease. Collis and Hussey (2003, p. 231) state that a *P*-value of more than 5% (more than one in twenty probability that results are due to random chance) is not acceptable in business research.

To analyse changes in distributions (and thus associations) between the study's variables, the non-parametric chi-square test (also identified as X^2) was used. The chi-square statistic is used in the cross tabulation of two variables of interest via the application of a contingency table that compares each number in each cell to the expected subpopulations *if* each cell were equally proportional (Kemp & Kemp 2004; Leedy & Ormrod 2001). Using the same Chi-square equation model generates two test results for interpreting the data (Kemp & Kemp 2004). Both are outlined in the following.

Firstly, the 'chi-sqaure test of proportions' indicates whether there is a significant difference between the variables. This chi-square test enables the researcher to assess whether a value is *different* from the standard or expected value. Testing for

differences requires a two-tailed hypothesis. A two-tailed hypothesis occurs when the researcher predicts that the independent variable has an effect on the dependent variable but is unsure, or does not specify, a direction (Collis & Hussey 2003; Trochim 2006). A suitable example would be, 'people from lower skilled occupations get different outcomes at arbitration than people from other skilled occupations'. Whether the outcomes are in favour or not of the lower skilled is not indicated in this two-tailed hypothesis. Whereas, a one-tailed hypothesis occurs when it predicts the direction of the result (Collis & Hussey 2003; Trochim 2006), and would be stated in a manner such as 'people from lower skilled occupations have more successful grievance arbitration outcomes'. Because the chi-square test looks for statistical dependences between rows and columns in either direction in the contingency table it is noted that it will not provide answers to this type of directional, one-tailed hypothesis (Kemp & Kemp 2004).

Secondly, the 'chi-square test for independence' indicates whether or not the dependent variable is associated to the independent variables. This test is commonly referred to as the Pearson chi-square test. 'Association' is the term generally used for dependent, but non-causal relationships between variables (Kemp & Kemp 2004). This means the variables are related in a systematic or logical way (Maricopa Centre for Learning and Instruction 2001) but are not causal. Thus the interpretation of the data in this study sought to determine significant levels of correspondence between the independent variables and the arbitration outcome, as opposed to making inappropriate claims of cause and effect.

Non parametric tests according to Kemp and Kemp (2004) are referred to as 'sturdy' statistics because they require few assumptions to be met in order to successfully run the tests. Void of requiring assumptions about the population distribution demands of parametric tests (Zikmund 2003), the assumptions for a chi-square test are: (1) at least 5 subjects occur in each of cell of the contingency table and (2) the data is ordinal, nominal or categorical (Kemp & Kemp 2004). The statistical software package used in this project (SPSS) provides warnings or will not complete the test if the first two assumptions are not met. This brings the discussion to the last point to be made in relation to the data interpretation method, which is that the statistical analysis software, SPSS was used to prepare the frequency tables and the chi-square tests in this research. Graphs were formulated using Microsoft Excel.

4.8 The Matters of Reliability and Validity

As a final note in the explanation of the research methodology, the issues of reliability and validity are addressed in this section. Reliability refers to the ability to replicate the study, which is generally high in quantitative studies in a positivistic framework (Collis & Hussey 2003). It is suggested that a researcher running the same tests on the data will achieve similar results, and because the data were gathered from publicly available source documents (that is, ARIC unfair dismissal arbitration decisions) on explicit items, such as gender and occupation, a collection and recoding exercise is likely to produce similar results.

Validity demands that research findings reflect reality and that the study assesses what the researcher claims it does (Collis & Hussey 2003). The use of the secondary data documents and the use of ABS classification standards support the validity of

this study. Moreover the constructs measured in this study are not 'hypothetical' constructs such as emotion or success. Instead, it measures constructs easily identified such as gender, occupation, type of industry, and size of business by employee numbers. In addition, the unfair dismissal arbitration decisions used in this study are genuine examples of workplace grievance arbitration. The fact that 'real life' decisions (not hypothetical decisions) were used to measure grievance arbitration outcomes also verifies the validity of this study.

4.9 Chapter Four Summary

It was ascertained in this chapter that the purpose of this research is to further *describe* the workplace grievance phenomenon by identifying independent variables associated with the arbitration outcomes. A positivist research paradigm was used to develop the methodology to conduct the research on the basis of the quantitative nature of the data. Advantages of the methodology include objective examination of the topic using quantitative data collected from secondary source documents. It was argued that the validity of the study is high because the source documents, being unfair dismissal arbitration decisions of the AIRC for 2004 and 2005, reflected actual arbitration events. Secondly, classifying the data according to the research variables was labelled as 'robust' because it involved easily measurable and/or identifiable concepts such a business size and gender. Furthermore, for industry and occupational skill level variables, national standards were used in classifying the data.

This type of categorical data is suitable only to non-parametric statistical testing, which was conducted in the form of Chi-square tests. The Chi-square test provides information on whether the dependent variable and independent variable are

associated. Association is ascertained by the test being able to yield an indication as to whether or not the variances in the proportions amongst the values in the dependent and independent variable are due to random chance.

CHAPTER FIVE

STATISTICAL ANALYSIS

5.0 Introduction

This chapter presents the results of the chi-square tests performed on each of the hypothesis. It will be shown in this chapter that eight of the ten statistical hypothesis tests accepted the alternative hypothesis, with the significance level set at <.05. Briefly, the variable industry sector was found not to be associated with arbitration outcomes and grievant's gender is not associated with jurisdictional restrictions to arbitration hearings. The remaining independent variables show a range of mild to strong associations with the arbitration outcomes.

5.1 Recounting the Research Questions and their Hypotheses

For the reader's convenience, the research questions and the ten subsequent hypotheses developed during the literature review, are reiterated in this section before proceeding to present the results of the data analysis in Section 5.2.

Research Question One:

Does the industry sector and size of the business in which the employment relationship occurs bear any relevance to the arbitration outcome?

H_1 *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

H_3 *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

H_4 *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

Research Question Two:

Is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration?

H_5 *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

Research Question Three:

Is there an association between the reason dismissed and the outcome of the arbitration hearing?

H_6 *The reason for dismissal is associated with the arbitration outcome.*

Research Question Four:

Does the aggrieved employee's gender bear association with arbitration outcomes?

H_7 *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

H_8 *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

***Research Question Five*:**

Does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims?

H_9 *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

H_{10} *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

5.2 Results of Statistical Analysis

In this section, the descriptive statistics pertaining to each hypothesis are presented in the form of a 100% stacked column graph. Similar to a pie graph, but providing a further level of detail, the 100% stacked column compares the percentage each *value* in a *category* contributes to the total *variable* (a pie graph shows only the percentage each category contributes to the total variable). Graphs enable visual examination of the distribution of the data and indicate outstanding characteristics (Kemp & Kemp 2004) that might otherwise be missed in tabular presentation of the data. Count data is provided in the contingency tables used in the calculation of the chi-square tests and the results of the chi-square tests for each hypothesis is presented immediately after each graph.

In relation to the descriptive statistics for the dependent variable, arbitration outcome, the 384 cases yielded a split of 132 cases in grievant favour (34.4%) and 252 in employer favour (65.6%). This figure however is inflated in employer favour because it includes cases that were filed and then found to be out of jurisdiction. The split counting the 274 within jurisdiction cases is 142 in employer favour (51.8%) and 132 (48.2%) in grievant favour.

5.2.1 Research Question 1: Hypotheses 1 to 4

The first research question considered whether the industry sector and size of the business in which the employment relationship occurs had any relevance to the arbitration outcome. The descriptive statistics and chi-square results for each of the first four hypotheses related to this question are reported below.

H_1 *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

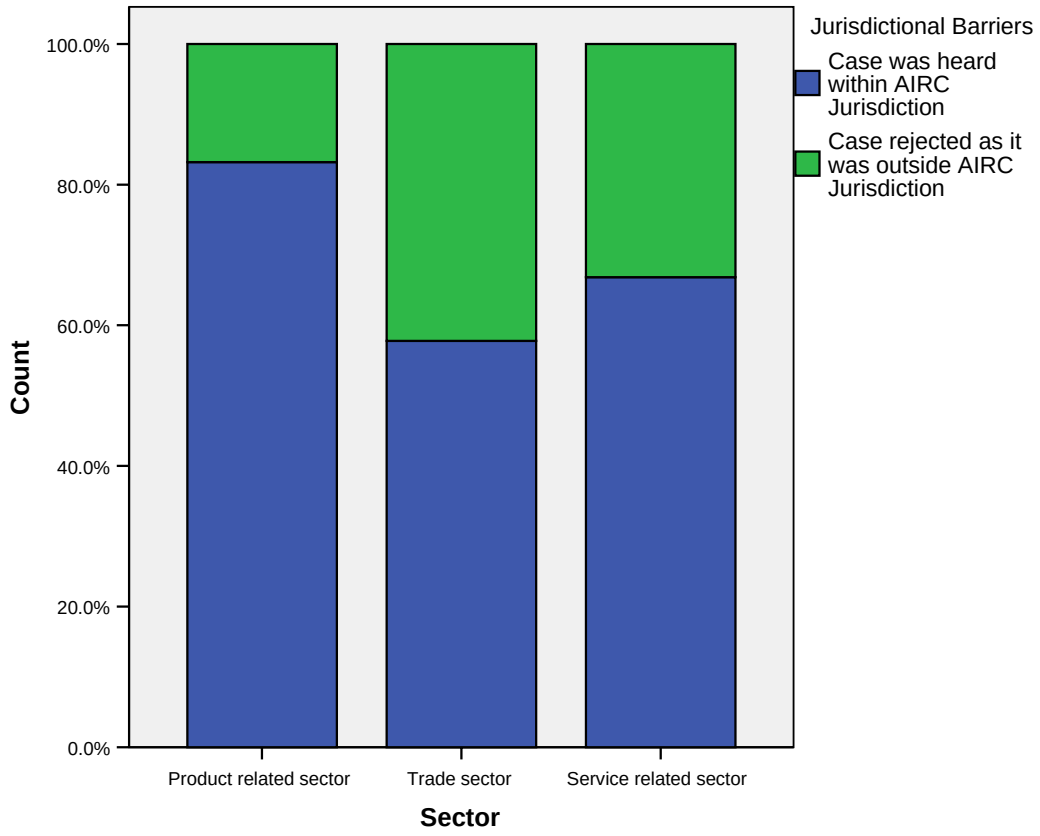


Figure 5.1 100% Stacked Column Chart: Arbitration Claims Successfully Lodged or Rejected by Industry Sector

Lodging an unfair dismissal arbitration claim with the AIRC does not mean automatically that the grievant will get an arbitration hearing. From Figure 5.1 it appears that employees from the trade related sector have the *highest* incidence of having their case rejected for an arbitration hearing due to jurisdictional issues, such as the dismissed employee was determined to be a probationary employee or a short term casual. Secondly the graph shows employees in product related industries lodge the *least* number of arbitration claims that are later 'thrown out' for a jurisdictional reason. The graph appears to support the suggestion in $\boldsymbol{H}_1$ that there are differences in the jurisdictional suitably of cases amongst industry sectors.

Table 5.1 Chi-Square Test for H_1

Jurisdictional Barriers and Industry Sector 2x3 Contingency Table

		Sector			Total
		Product related sector	Trade sector	Service related sector	
Jurisdictional Barriers	Case was heard within AIRC Jurisdiction	109	26	139	274
	Case rejected as it was outside AIRC Jurisdiction	22	19	69	110
Total		131	45	208	384

X^2 = 15.1462, df = 2, critical value = 5.9915, *P*-Value = .0005, p < 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 12.89.

The chi-square test in Table 5.1 shows strong evidence with its *P*-value of .0005 that the differences are significant between the sectors in terms of initiation of arbitration. A post-hoc analysis of Table 5.1 suggests the product related sector employee is more likely to have the case heard within jurisdiction compared to the trade sectors, which is less likely to have lodged a cased that is within jurisdiction.

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

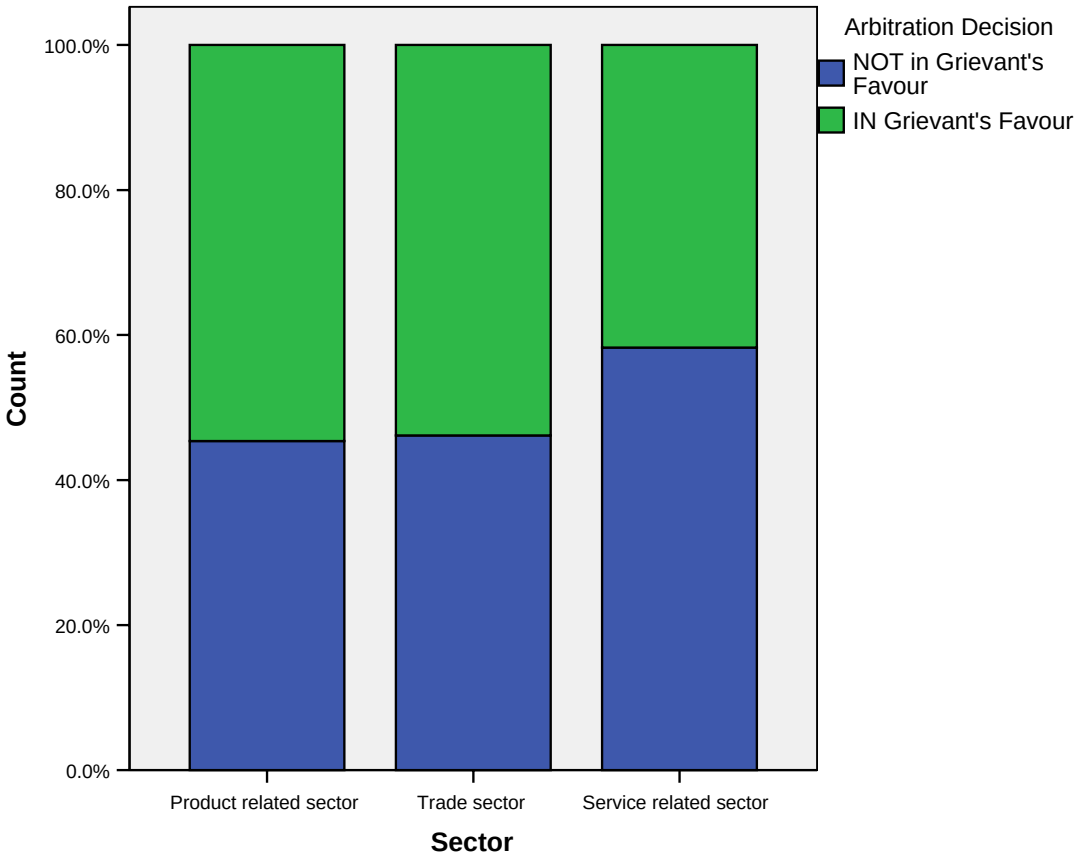


Figure 5.2 100% Stacked Column Chart: Arbitration Outcome by Industry Sector

The graph in Figure 5.2 suggests that each sector appears to receive similar arbitration outcomes. This chi-square test appears in following table.

Table 5.2 Chi-Square Test for H_2

Arbitration Decision and Industry Sector 2x3 Contingency Table

		Sector			Total
		Product related sector	Trade sector	Service related sector	
Arbitration Decision	NOT in Grievants Favour	49	12	81	142
	IN Grievants Favour	59	14	58	131
Total		106	26	139	273

X^2 = 4.4495, df = 2, critical value = 5.9915, *P*-Value = .1081, p > 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 12.48.

The chi-square test presented in Table 5.2 confirms that with a *P*-value of 0.108, which is well above the .05 significance level: there is no evidence that the arbitration outcome differs across the sectors. Therefore the null hypothesis stands.

***H*$_3$** *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

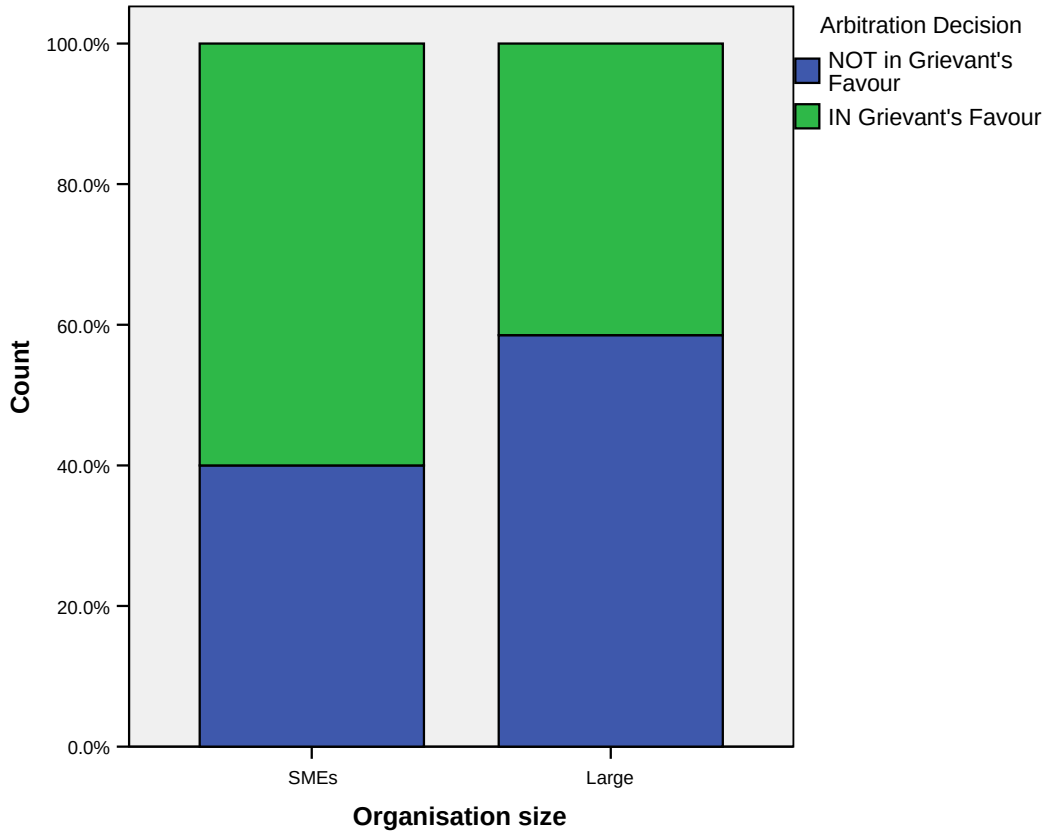


Figure 5.3 100% Stacked Column Chart: Arbitration Outcome by Business Size

The graph in Figure 5.3 suggests larger businesses (over 200 employees) and SMEs (up to 200 workers), receive different arbitration decisions, with employees from SMEs fairing better at arbitration than employees from larger businesses. The chi-square test for this appears in the next table.

Table 5.3 Chi-Square Test for H_3

Arbitration Decision and Business Size 2x2 Contingency Table

		Business size		Total
		SMEs Up to 200 staff	Large Over 200 staff	
Arbitration Decision	NOT in Grievant's Favour	34	55	89
	IN Grievant's Favour	51	39	90
Total		85	94	179

X^2 = 6.1180, df = 1, critical value = 3.8415, *P*-Value = .0134, p < 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 42.26.

The chi-squared test in Table 5.3 shows a strong association (P = 0.013) between organization size (dichotomized as SMEs and large) and arbitration outcome. A post hoc analysis of the contingency table suggests that large organizations are more likely to have decisions found in favour of the employer (that is *not* in the grievant's favour) and SMEs more likely to have decisions made in favour of the dismissed employee.

As the SME definition included organisations up to 200 employees, a more detailed look at the SMEs is taken to identify whether there was a particular size that is more likely to have a decision determined against them. Figure 5.4 shows the distribution of arbitration decisions when the SME sector is divided into three categories: 50 employees or fewer; 51 to 100 employees; 101 to 200 employees. It also represents the large businesses of over 200 employees. On viewing Figure 5.4 it can be seen clearly that the category, 51 to 100 employees, is different to the other sized business by receiving far fewer favourable decisions.

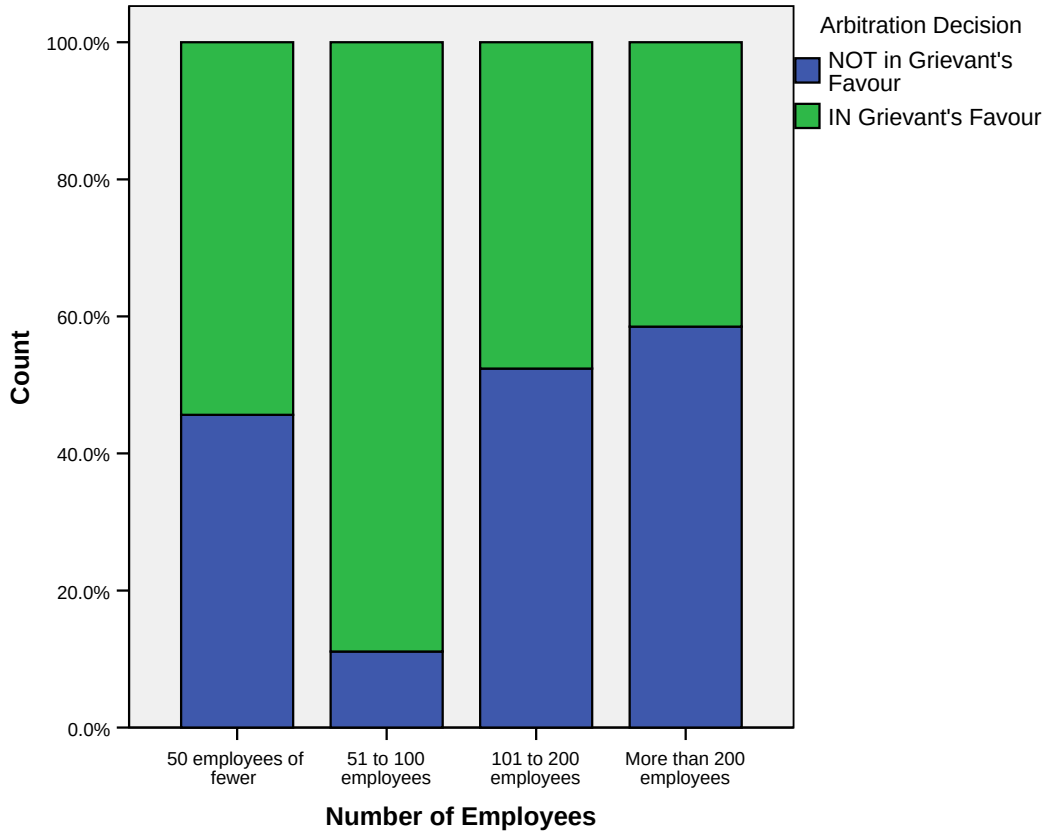


Figure 5.4 100% Stack Column Chart: Arbitration Outcome for Small and Medium Sized Business

The chi-squared test in Table 5.4 gives a *P*-value of 0.0029 providing strong evidence that the proportions differ, the post hoc analysis indicating that it is the 51 to 100 employee category causing this statistically significant difference.

Table 5.4 Chi-square Test of SME Arbitration Outcomes

Arbitration Decision and Number of Employees 2x4Contingency Table

		Number of Employees				Total
		50 employees or fewer	51 to 100 employees	101 to 200 employees	More than 200 employees	
Arbitration Decision	NOT in Grievant's Favour	21	2	11	55	89
	IN Grievant's Favour	25	16	10	39	90
Total		46	18	21	94	179

X^2 = 14.00259, df = 3, critical value = 7.814728, *P*-Value = .0029, p < 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 8.95.

***H*$_4$** *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

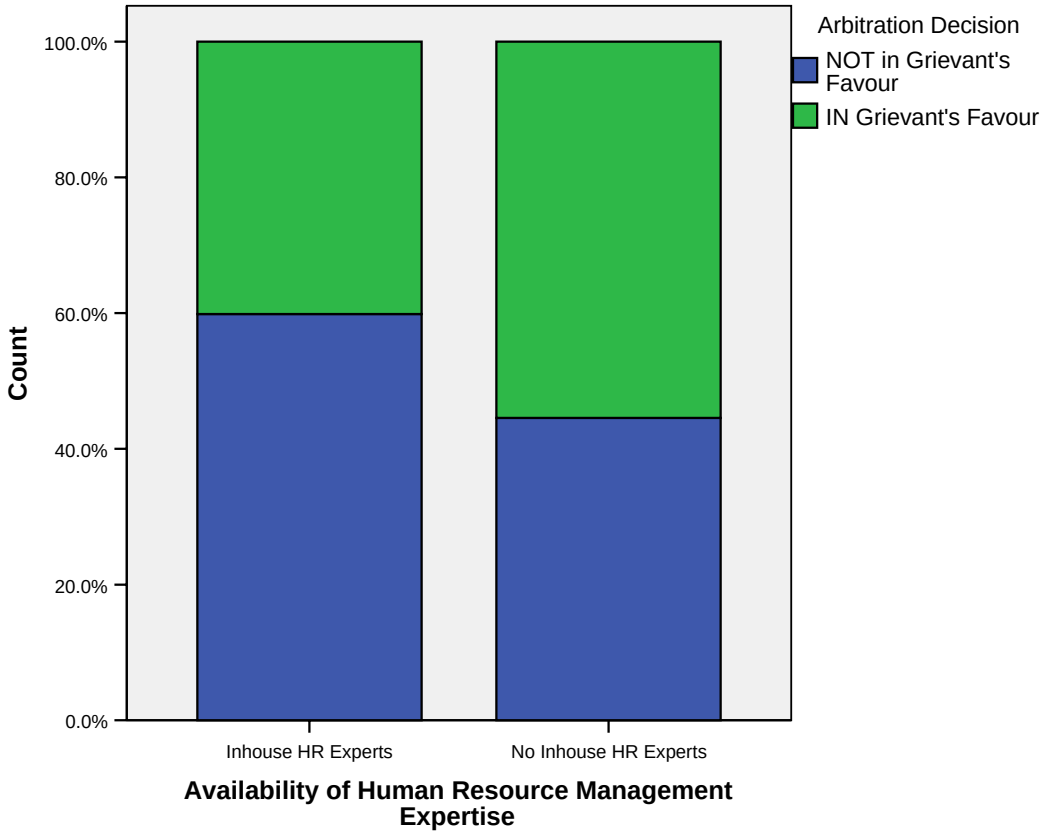


Figure 5.5 100% Stacked Column Chart: Arbitration Outcome and Human Resource Expertise

The graph in Figure 5.5 shows a variation in the arbitration outcomes when considered in the context of whether a human resource expert is available in or to the employing business. It shows the most common event is an unfavourable decision to the dismissed employee when there is a human resource expert involved in the business.

Table 5.5 Chi-square Test for H_4

Arbitration Decision and Presence of Human Resource Management Expertise
2x2 Contingency Table

		Availability of Human Resource Management Expertise		Total
		Inhouse HR Experts	No Inhouse HR Experts	
Arbitration Decision	NOT in Grievant's Favour	91	41	132
	IN Grievant's Favour	61	51	112
Total		152	92	244

$X^2 = 5.4050$, df = 1, critical value = 3.8415, *P*-Value = .0201, $p < 0.05$
0 cells (.0%) have expected count less than 5.
The minimum expected count is 42.23.

The chi-squared test in Table 5.5 shows a slight association ($P = 0.0201$) between the availability of a human resource expert and the arbitration outcome. The post hoc analysis of the contingency table suggests that the presence of an HR expert is associated with outcomes *not* in favour of the grievant. It is noted that this result reflects closely the graph in Figure 5.3 and Chi-square test in Table 5.3 on arbitration outcome by business size. It is noted that the presence of human resource expertise may be a proxy for business size. That is, nearly all large businesses have an HR expert and most of the smaller businesses are void of one. Consequently, the Chi-square tests are assessing similar count data.

5.2.2 Research Question 2: Hypothesis 5

This question pertains to the occupational skill level of the aggrieved employee and whether it is associated with the outcome of a grievance settled by arbitration. The hypothesis determined from the literature review was:

H_5 *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

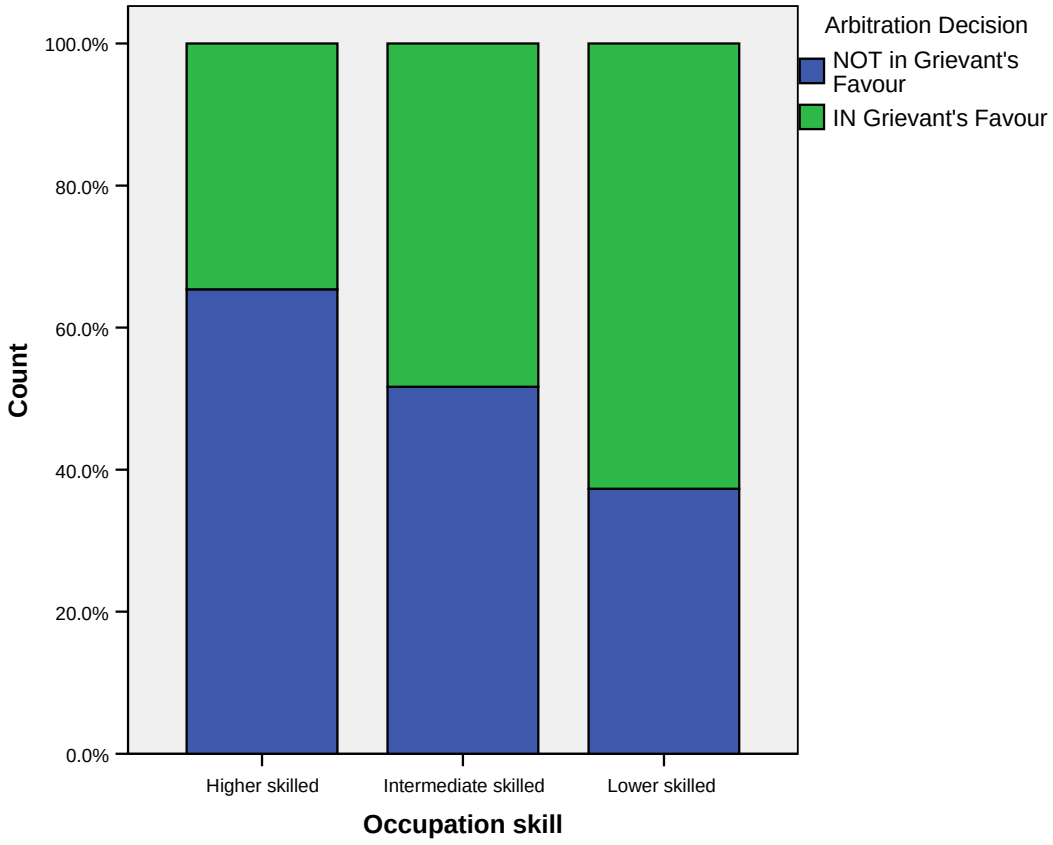


Figure 5.6 100% Stacked Column Chart: Arbitration Outcome by Occupational Skill Levels

The graph in Figure 5.6 suggests a trend: the higher skilled the occupation, the more likely the decision will be *not* in the grievant's favour. This is tested for significance in the following chi-square.

Table 5.6 Chi-Square Test for H_5

Arbitration Decision and Occupational Skill Level 2x3 Contingency Table

		Occupational Skill Level			Total
		Higher	Intermediate	Lower	
Arbitration Decision	NOT in Grievant's Favour	51	62	25	138
	IN Grievant's Favour	27	58	42	127
Total		78	120	67	265

X^2 = 11.3944, df = 2, critical value = 5.9915, *P*-Value = .0034, $p < 0.05$
0 cells (.0%) have expected count less than 5.
The minimum expected count is 32.11.

The formal chi-squared test in Table 5.6 shows a strong association ($P = 0.0034$) between the occupational skill level and the arbitration decision, whereby, employees in lower skilled occupations are more likely to receive favourable arbitration outcomes, and this outcome becomes less likely as the occupational skill level increases.

5.2.3 Research Question 3: Hypothesis 6

Research question three considers whether there is an association between the reason dismissed and the outcome of the arbitration hearing.

H_6 *The reason for dismissal is associated with the arbitration outcome.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

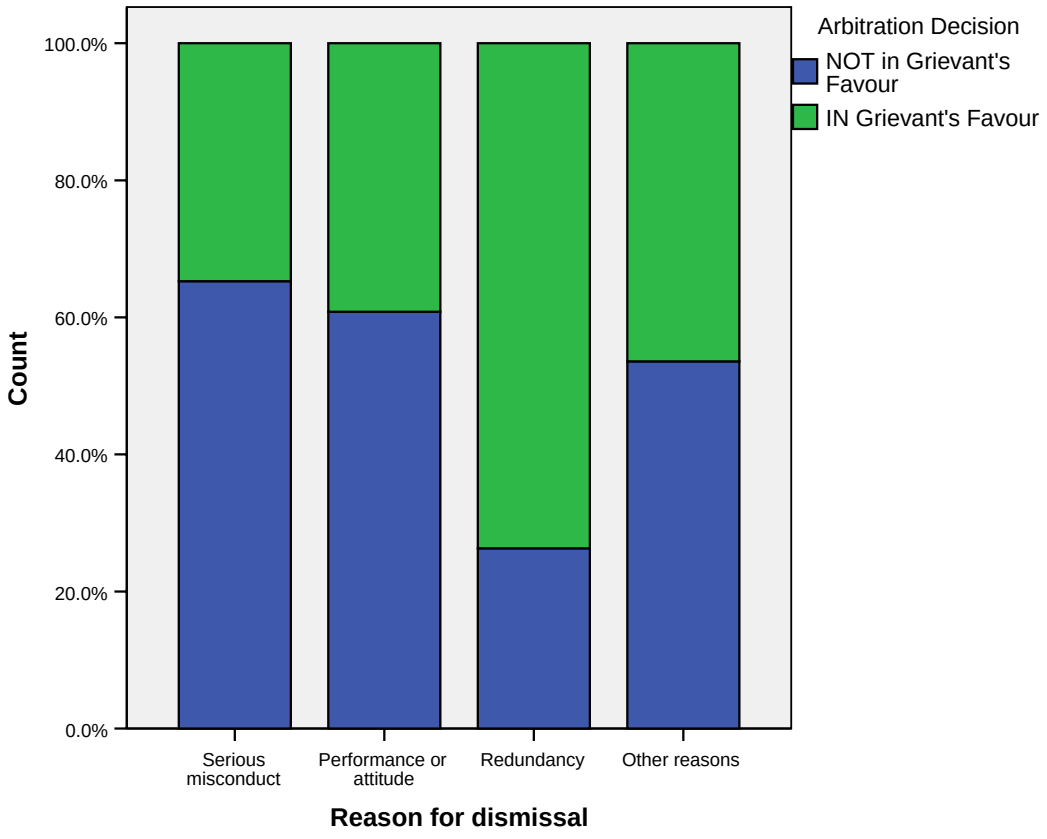


Figure 5.7 100% Stack Column Chart: Arbitration Outcome by Reason for Employee Dismissal

The graph in Figure 5.7 suggests differences, the stand out observation being that when redundancy is used as a reason for dismissal, the aggrieved employees show a high percentage of obtaining favourable arbitration outcomes.

Table 5.7 Chi-Square Test for H_6

Arbitration Decision and Reason for Dismissal 2x4 Contingency Table

		Reason for dismissal				Total
		Serious misconduct	Performance or attitude	Redundancy	Other reasons	
Arbitration Decision	NOT in Grievant's Favour	62	45	20	15	142
	IN Grievant's Favour	33	29	56	13	131
Total		95	74	76	28	273

X^2 = 29.11162 df = 3, critical value = 7.814728, *P*-Value = .0001, p < 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 13.44.

The chi-square test in Table 5.7 with a *P*-value of .0001 confirms there is a significant difference between the reason dismissed and the likely outcome. The post hoc analysis of the contingency table suggests strongly that this test result is due to redundancy being clearly different to the other three reasons for dismissal, particularly as these other reasons have very similar results. Employees dismissed through redundancy are associated with decisions in their favour. Whilst aggrieved employees dismissed due to any of the other another reasons are associated with unfavourable outcomes. It also shows that serious misconduct is associated with findings not in the grievants' favour.

5.2.4 Research Question 4: Hypotheses 7 and 8

The gender of the dismissed employee is addressed in the fourth research question that asks: does the aggrieved employee's gender bear association with the arbitration outcome? Two hypotheses address this question, with H_7 considered first.

H_7 *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

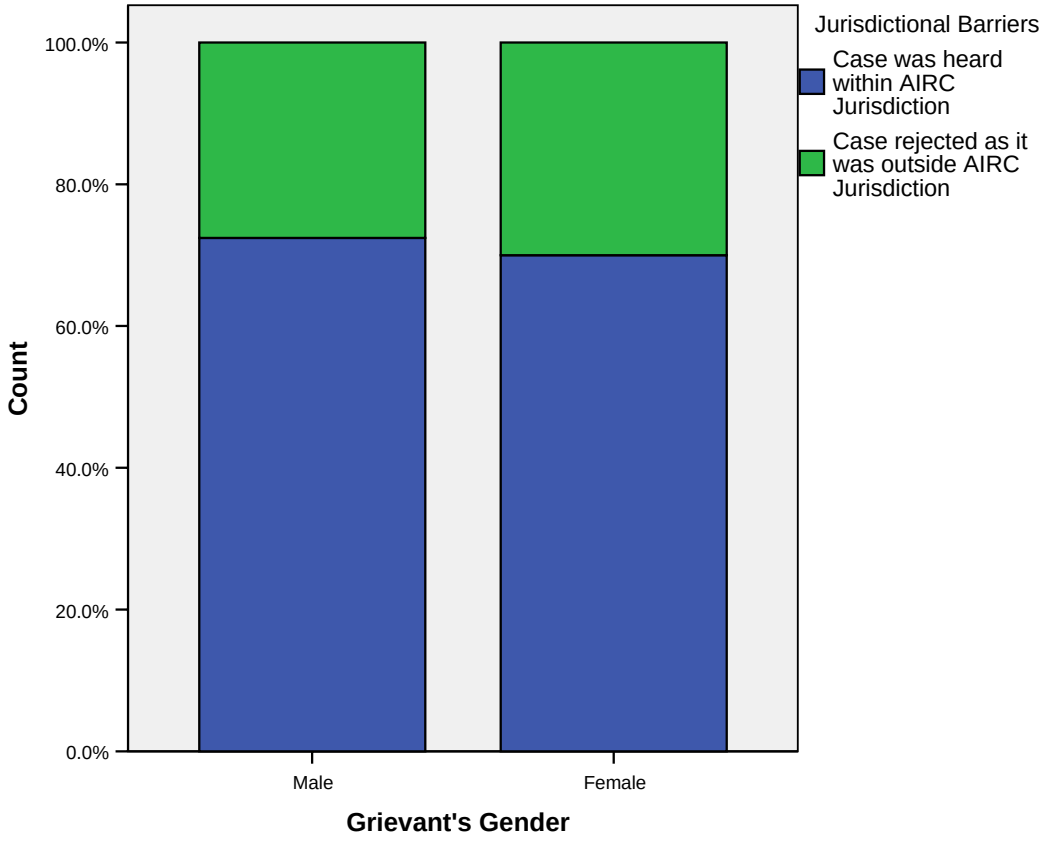


Figure 5.8 100% Stacked Column Chart: Arbitration Claims Lodged or Rejected by Grievant Gender

As noted in the discussion for the first hypothesis, lodging unfair dismissal arbitration claims with the AIRC does not automatically mean that the grievant will get an arbitration hearing. However, the graph in Figure 5.8 appears to present similar distributions for male and female grievants in terms of the proportion of arbitration claims lodged and those which are rejected for jurisdictional reasons. The following Chi square test will confirm or deny this observation.

Table 5.8 Chi-Square Test for H_7

Grievant's Gender and Jurisdictional Barriers 2x2 Contingency Table

		Jurisdictional Barriers		Total
		Case was heard within AIRC Jurisdiction	Case rejected as it was outside AIRC Jurisdiction	
Grievant's Gender	Male	197	75	272
	Female	77	33	110
Total		274	108	382

X^2 = .2274, df = 1, critical value = 3.8415, *P*-Value = .6335, p > 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 31.10.

With a P-value of .6335 the results of the test presented in Table 5.8 indicate clearly that there is no difference in outcomes or evidence of association between gender and successful lodgement of arbitration decisions through jurisdictional barriers.

The second hypothesis developed to address the fourth research question examining the effects of gender at arbitration is:

***H*$_8$** *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

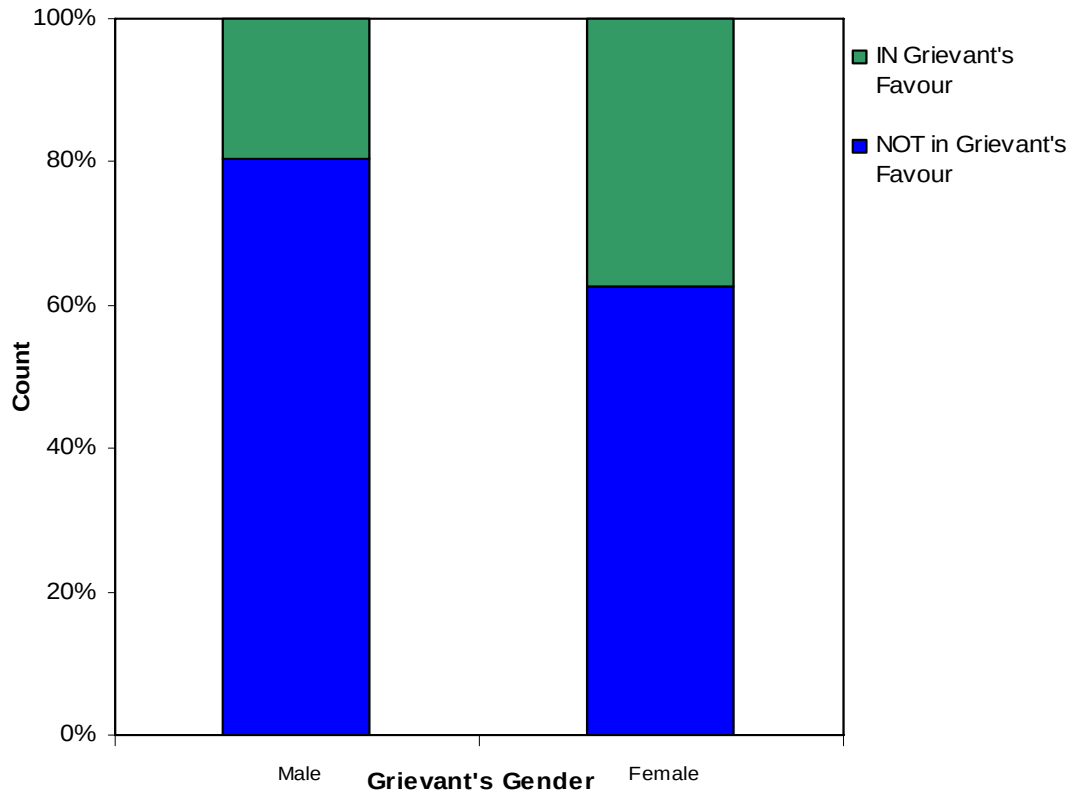


Figure 5.9 100% Stacked Column Chart: Arbitration Outcome by Grievant Gender

The implication from the graph in Figure 5.9 is that female grievants have the highest proportion of obtaining favourable decisions. The following Chi-square test in Table 5.9 will assess whether this is statistically significant.

Table 5.9 Chi-Square Test for H_8

Grievant's Gender by Arbitration Decision 2x2 Contingency Table

		Arbitration Decision		Total
		NOT in Grievant's Favour	IN Grievant's Favour	
Grievant's Gender	Male	114	82	196
	Female	28	49	77
Total		142	131	273

$X^2 = 10.5256$, df = 1, critical value = 3.8415, *P*-Value = .0012, $p < 0.05$
0 cells (.0%) have expected count less than 5.
The minimum expected count is 36.95.

The *P*-value of .0012 indicates a difference, very strongly, between the arbitration outcomes that male and females receive, with favourable decisions associated with female grievants.

5.2.5 Research Question 5: Hypotheses 9 and 10

The fifth and final research question also pertained to gender, but that of the arbitrator. It considers whether the arbitrator's gender bears association with the decisions they make on unfair dismissal claims. The question is addressed with the ninth hypotheses:

***H*$_9$** *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

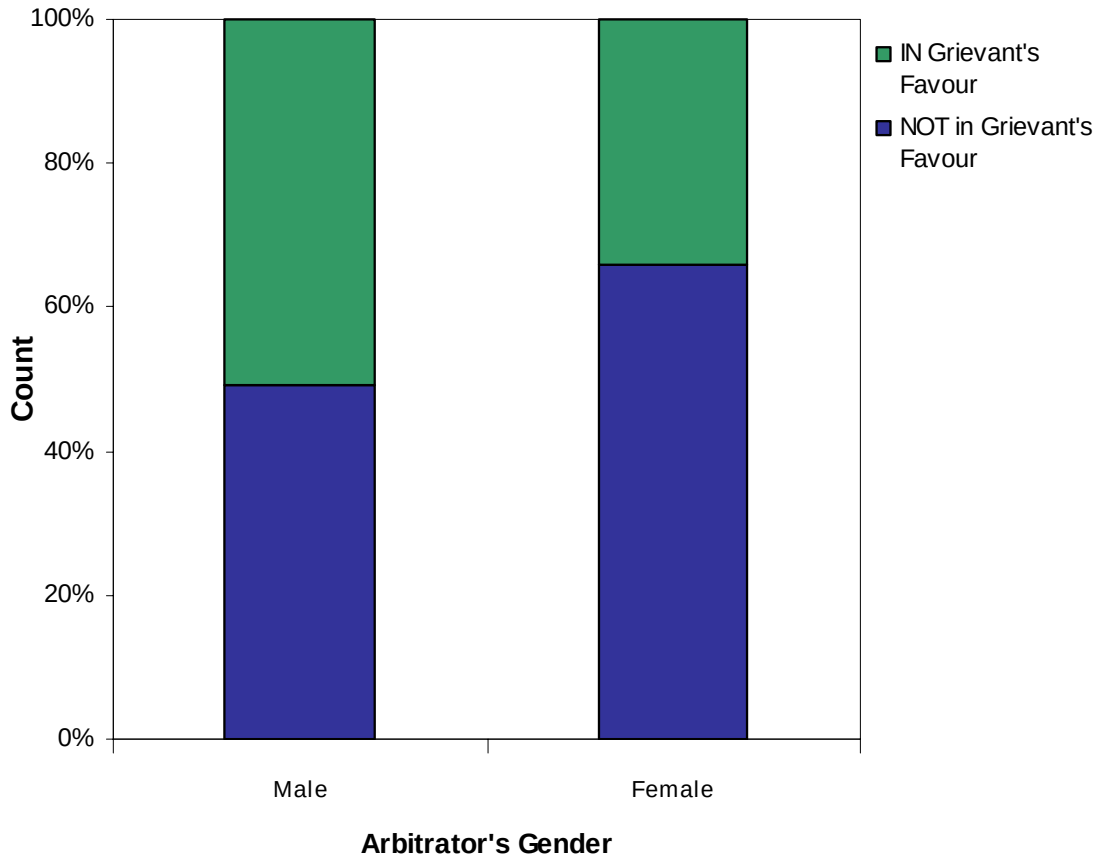


Figure 5.10 100% Stacked Column Chart: Arbitration Outcome by Arbitrator Gender

The graph in figure 5.10 demonstrates that male arbitrators delivering decisions favourable to the aggrieved employees is the most common decision which is opposite to female arbitrators delivering a higher proportion of their decisions favourable to employers. The Chi-square test in Table 5.10 statistically tests these proportions to determine whether these are different significantly.

Table 5.10 Chi-Square Test for H_9

Arbitrator's Gender and Arbitration Decision 2 x2 Contingency Table

		Arbitration Decision		Total
		NOT in Grievant's Favour	IN Grievant's Favour	
Arbitrator's Gender	Male	113	117	230
	Female	29	15	44
Total		142	132	274

$X^2 = 4.1647$, df = 1, critical value = 3.8415, *P*-Value = .0413, $p < 0.05$
0 cells (.0%) have expected count less than 5.

The Chi-square test with a P-value of .0413 indicates a statistically significant difference between the decisions handed down according to the arbitrator's gender and that male arbitrators are associated with decisions favourable to grievants and female arbitrators are associated with decisions favourable to the employer. It is noted that five times as many arbitration decisions were made by male arbitrators compared to female arbitrators (230 decisions compared to 44 respectively). It is noted that although statistically significant there is a chance, more likely, of a Type I error occurring because of the smaller sample size for female arbitrators.

Having established an association between arbitrator gender and the favourability or otherwise of the arbitration outcome for grievants, the next aspect considered in relation to the fifth research question is whether arbitrator gender is associated with

the grievant's gender and the decision handed down to them. Two issues were considered in preparation for this testing. First, whether cases were allocated to the commissioners on a random basis and second, that of sufficient sample size of female arbitrator decisions.

It was first ascertained that the allocation of cases occurred on a random basis and whether there was a pattern of, for example, female commissioners hearing female grievant cases, which would compromise test results. To do this, a chi-square was initially performed to test for evidence whether the gender of grievant is associated with arbitrator gender. This test is reported in Table 5.11.

Table 5.11 Chi-square Test to Check Random Allocation of Cases to Arbitrators

Grievant's Gender and Arbitrator's Gender 2x2 Contingency Table

		Arbitrator's Gender		Total
		Male	Female	
Grievant's Gender	Male	162	34	196
	Female	67	10	77
Total		229	44	273

X^2 = .777, df = 1, critical value = 3.8415, *P*-Value = .378, p > 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 12.41.

The test indicates no association between grievant gender and arbitrator gender with 70% (162/229) of the cases heard by male arbitrators for male grievants, and 77% (33/44) of cases heard by female arbitrators for male grievants. This suggests that the allocation of cases is random to the extent that female commissioners do not hear specifically female grievances and so forth.

In relation to the second issue of female sample size, 48 Commissioners presided over the unfair dismissal arbitration cases, of which only 11 were female arbitrators. It was suspected that the sample size pertaining to the female arbitrators would be insufficient to test reliably, which is confirmed in the Chi-square tests provided in Table 5.12.

Table 5.12 Chi-square test of Female Arbitrator Decisions

Grievant's Gender and Arbitration Decision by Female Arbitrator
2x2 Contingency Table

		Arbitration Decision		Total
		NOT in Grievant's Favour	IN Grievant's Favour	
Grievant's Gender	Male	23	11	34
	Female	6	4	10
Total		29	15	44

X^2 = .201, df = 1, critical value = 3.8415, *P*-Value = .654, p > 0.05
** 1 cells (25.0%) have expected count less than 5.
The minimum expected count is 3.41.

Table 5.12 shows that a sample size of 44 decisions determined by the female arbitrators did not prove to be a sufficient sample for confident Chi-square testing, as one of the cells has a frequency count below 5. The biggest issue is lack of power, with the small number not providing enough data to detect statistically a difference. There is insufficient data to perform tests reliably on female arbitrators demonstrating gender bias for grievants. However, the sample size for male arbitrators was suitable for testing which is contained in the tenth hypothesis.

***H*$_{10}$** *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

The distribution of the variables used to test this hypothesis is displayed in the following graph:

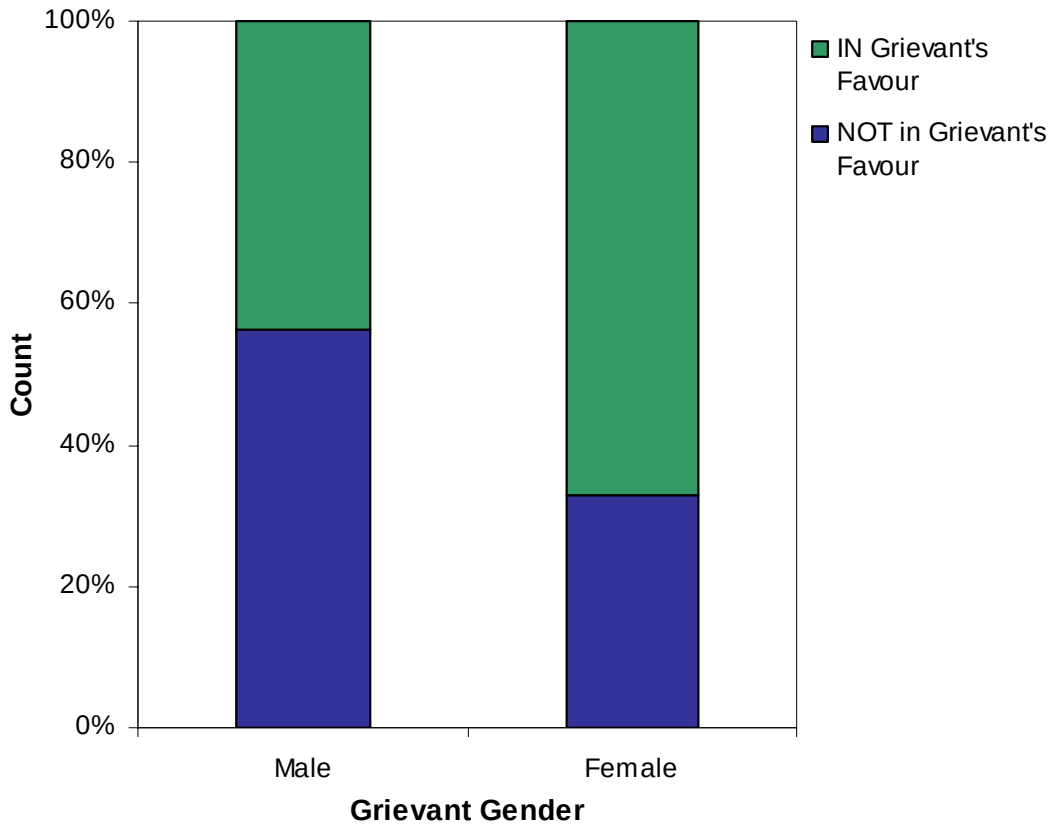


Figure 5.11 100% Stacked Column Chart: Male Arbitrator Decisions According to Grievant Gender

The graph in Figure 5.11 illustrates that the largest proportion of decisions made by male arbitrators are favourable to female grievants. This appears to demonstrate a gender bias for female grievants on the side of male arbitrators. The formal Chi-square test to address this follows in Table 5.13.

Table 5.13 Chi-Square Test for H_{10}

Grievant's Gender and Arbitration Decision by Male Arbitrator 2x2 Contingency Table

		Arbitration Decision by Male Arbitrators		Total
		NOT in Grievant's Favour	IN Grievant's Favour	
Grievant's Gender	Male	91	71	162
	Female	22	45	67
Total		113	116	229

X^2 = 10.327, df = 1, critical value = 3.8415, *P*-Value = .001, p < 0.05
0 cells (.0%) have expected count less than 5.
The minimum expected count is 33.06.

The result of the Chi-square test illustrated in Table 5.13 provides evidence that there is a strong association between the decisions of male arbitrators and aggrieved female employees receiving favourable arbitration decision.

4.3 Chapter Five Summary

Three hundred and eighty-four cases were read and coded for data entry and yielded a split of 34.4% of findings in grievant favour and 65.6% in employer favour. It was noted that this figure is inflated in the employer favour because it includes cases that were filed and then found to be out of jurisdiction. The split counting the 274 within jurisdiction cases is 51.8% in employer favour and 48.2% in grievant favour. The results of the data analysis of each of the hypothesis developed from the literature review are:

***H*$_1$** *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

Result: Accept the alternative hypothesis

There is a statistically significant difference (p<.05) between industry sectors with employees belonging to the trade related sector more likely to have their application seeking an unfair dismissal hearing before the AIRC rejected due to jurisdictional issues. The test also indicated that product related sector employees were the most successful at getting arbitration claims past jurisdictional barriers..

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

Result: Reject the alternative hypothesis

There is no support for the suggestion that employees from service sector industries receive different arbitration outcomes to those in other industries.

H_3 *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

Result: Accept the alternative hypothesis

There is a statistically significant difference (p<.05) between SMEs and larger businesses in terms of arbitration outcomes. The test suggests large organisations are the most likely to receive a favourable decision and the least likely outcome is for aggrieved employees from SMEs to receive a favourable decision. A further test was conducted on the values within the SME category of the business size variable. It revealed that the 51 to 100 employee size business is showing statistically significant differences within the SME category, suggesting it is this size business that is causing the significant variation between SMEs and large business.

H_4 *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) in arbitration outcomes between businesses with a human resource expert and those without. The test suggests the presence of an HR expert is associated with outcomes, with the most likely outcome being one that is favourable to the employer.

H_5 *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) between employees from with different occupational skill levels and the arbitration outcome they receive. The test supports a clear trend: the higher skilled the occupation, the more likely the decision will be unfavourable to the aggrieved employee.

H_6 *The reason for dismissal is associated with the arbitration outcome.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) between reason dismissed and arbitration outcome. The association inferred in this analysis is that employees made redundant receive a higher proportion of decisions in

their favour and those employees who are dismissed for serious misconduct receive a higher proportion of unfavourable decisions.

H_7 *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

Result: Reject the alternative hypothesis

The gender of the grievant is not associated with having a grievance rejected for being outside jurisdiction.

H_8 *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) between the gender of the grievant and the arbitration outcome. Female grievants are associated with favourable arbitration outcomes.

H_9 *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) between the gender of the arbitrator and their arbitration decisions. Male arbitrators are associated with decisions favourable to the aggrieved employee. Female arbitrators are associated with decisions favourable to the employer.

H_{10} *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

Result: Accept the alternative hypothesis

There is a statistically significant difference ($p<.05$) between arbitration decisions given to male and female grievance by male arbitrators. The test suggests that male arbitrators are more likely to give a favourable decision to a female grievant. Tests were also run on female arbitrators and the association of their decisions with grievant gender, however, one of the cells in the contingency table was insufficient to report confidently the results.

The following chapter will discuss the interpretation of these findings within the context of the literature review from which the hypotheses were drawn before making final conclusions in relation to the research questions.

CHAPTER SIX

DISCUSSION OF RESULTS AND CONCLUSIONS

6.0 Introduction

This final chapter commences with a discussion of the results of the statistical analysis in combination with the literature review to progress the objective of the study which was ***"To examine the association between inherent characteristics of unfair dismissal arbitration cases and consequent arbitration decisions."*** The second section of the chapter contains the author's conclusions in respect to each research question, thus ultimately obtaining the study objective of describing inherent characteristics of unfair dismissal arbitration decisions. The last section of the chapter notes areas for further research.

6.1 Discussion of Results

After commentating on the descriptive statistics for the dependent variable, the five research questions pertaining to each of the independent variables related to the study objective are discussed individually in the following discussion of results.

6.1.1 The Descriptive Statistics

The statistical breakdown of the dependent variable - arbitration outcomes - resulted in 51.8% of decisions in the employer's favour and 48.2% in the grievant's favour. A direct comparison of this study's breakdown of favourable/unfavourable decisions cannot be compared directly to the AIRC historical data on favourable/unfavourable decisions over the same time period (presented in Table 2.4) as the AIRC reports

annual financial year totals, whereas the data were collected according to calendar year. These results do however mimic the breakdown of the seven year average of AIRC decisions from July 1999 to June 2006 whereby 53.6% of decisions supported the employer and 46.4% supported the aggrieved employee (Australian Industrial Relations Commission 2005, 2006c). This equates to a small variation of 1.8% between historical figures and this study's figures which supports the legitimacy of the findings relating to the dependent variable, arbitration outcomes.

This study's figures are also within the vicinity of those found in the Chelliah and D'Netto (2006) study of AIRC arbitration outcomes which found 49.4% of decisions supported the employer and 50.6% supported the aggrieved employee. The 2.4% variation between this study and the Chelliah and D'Netto study could be due to different sampling periods, with this study analysing 2004 and 2005 decisions whilst the Chelliah and D'Netto study sampled between 1997 and 2000. Considering the sample size of both studies, 384 and 342, it is *estimated* that a difference of around nine decisions would equate to a 2.4% variation, which is not extensive. It is therefore quite plausible that such a variation results from the different sampling timeframes. Ultimately, the similarity between the studies improves the confidence in the methodology used to collect and code the data for this study. It also suggests a general consistency in decision making by the AIRC (that is roughly a 50/50 split favouring employers and grievants). A further examination of the results for each of the research questions is now provided.

6.1.2 Research Question One: Discussion

The question is: does the industry sector and size of the business in which the employment relationship occurs bear relevance to the arbitration outcome? The first of four statistical hypotheses for this question with its ensuing discussion follows.

H_1 *There is a significant difference between industry sectors in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

This alternative hypothesis was supported in the statistical analysis with strongly significant differences existing between industry sectors in terms of lodging within jurisdiction claims. Further it is the trade sector employees who are associated with lodging claims that are later rejected for being outside jurisdiction. The trade sector relates to the wholesale and retail trade industries which combine to be by far the highest user of part-time/casual workers of all industries (Australian Bureau of Statistics 2006). The retail industry alone provides approximately 15% of all jobs in Australia and in particular offers job opportunities to young people, with around 40% of its workers under the age of 25 (Commonwealth of Australia 2005). Furthermore, the retail industry is a heavy user of casual employment with about 45% of retail jobs reportedly casual in nature (Commonwealth of Australia 2005). A general assumption in Australia is that part-time or casual employees are hired to fill unimportant jobs, inconsequential to organisational success, that lack job security, training, have limited access to organisational communication and in receipt of 'inferior' earnings to full time workers (Gray & Laidlaw 2002; Watson, I. 2005).

A logical explanation of why the trade sector shows a marked difference in the number of unsuccessful applications to the AIRC can be found in the literature

review. The literature review raised the issue that variations potentially exist amongst Australian industries in their exposure to claims of unfair dismissal. The premise of this claim is twofold. Firstly, that industries may find that they avoid the legislative demands of terminating the employment contract through the avoidance of tenured positions (Campbell & Brosnan 1999; Hall 2002). Thus businesses are staffed through the use of labour hire employees and those types of employees excluded under the Workplace Relations Act 1996 from filing an unfair dismissal grievance in the AIRC such as trainees, apprentices, probationary employees and casual or short term staff. Secondly, and related to the previous point, is the matter of weakening union memberships which is occurring, among other reasons, from increases in casual and youth employment (Burgess 2000; Lewis 2004). Void of advice and representation by unions it is suggested that dismissal rates increase (Klass, Brown & Heneman III 1998). Consequently, it could be that ill advised or supported casuals, youth, probationary, trainees and limited tenure employees are submitting arbitration claims in the AIRC, only to be rejected, and that because the notably highest user of such employees is the trade sector, the variation bears through in the statistical analysis.

H_2 *There is a significant difference between the service related industries and the trade and product related industries in relation to arbitration outcomes.*

The second alternative hypothesis was not supported by the statistical analysis and as a result the null hypothesis stands. The analysis does not support the suggestion that variations exist between industries in the actual arbitration outcomes once a dismissal claim successfully makes it through jurisdictional barriers. The initial premise of the

hypothesis was that Klass, Brown and Henemann III (1998) found variations in the actual rates of dismissal amongst industries in Australia. However, this variation in dismissal rates did not translate into a variation in unfair dismissal arbitration outcomes as was subsequently hypothesised in $\boldsymbol{H}_2$. This is in variation to the findings in Head and Lucas' (2004) and Mills and Dalton's (1994) research into grievances in service related industries which indicated service industries were likely to receive different arbitration outcomes from other industries. The contention that service industries face 'hard' human resource management practices and the imprecise nature and expectations of the work, did not translate into service sector employees being associated with statistically different arbitration outcomes from the other industry sectors in this statistical analysis.

$\boldsymbol{H}_3$ *There is a significant difference between small and medium sized businesses (SMEs) and larger businesses in relation to arbitration outcomes.*

Statistical support was found for the third hypothesis, with aggrieved employees from SMEs associated with a favourable outcome and aggrieved employees from large business associated with an unfavourable outcome. This differs from the UK study by Earnshaw, Marchington and Goodman (2000) which found that SME employers won more than they lost, but supports the more recent UK study by Saridakis et al. (2006) that suggests small business employers were more likely to lose a case.

The further detailed analysis on the values within the SME categories proves interesting. It revealed that the 'less than 50 employee' business size actually defies

the initial dichotomised SME (up to 200 staff) and large business (over 200 staff) chi-square findings of $\boldsymbol{H}_3$. It rather suggests that businesses owners of less than 50 staff are associated with favourable outcomes. Previous research presented in the literature review suggested that informal management of the grievance process, as generally adopted by small firms, serves just as well as formal management process used by larger organisations, in the eyes of arbitrators. This is inline with Earnshaw, Marchington and Goodman's (2000, p. 73) suggestion that informal approaches by SME owners in dealing with discipline should not result in the assumption that employees will be 'worse off'. It was noted in the literature review that the AIRC has an obligation to take into account the size of the firm (and the availability of HR expertise) in their deliberations. This finding indicates that this legislative requirement for arbitrators to include in their deliberations the availability of HR expertise and business size appears to be occurring in practice.

However, unfortunately for SMEs employing between 50 and 100 staff, the results of the statistical analysis suggests they are performing not as well at the arbitration table as smaller and larger organisations. For this size business, the use of informal processes may be leaving them vulnerable to making mistakes in administering their dismissals (Hornsby & Kuratko 2003; Kotey & Slade 2005; Kuratko & Hodgetts 2004). Informal HR practices in terms of dealing with dismissal can be illustrated by the employer 'having a quiet word' with the employee in question (Earnshaw, Marchington & Goodman 2000, p. 70) or not providing an opportunity for the employee to respond to an allegation or seek advice. It is suggested that such procedural mistakes are being noticed by the arbitrators (Head & Lucas 2004). Businesses employing from 100 to 200 staff are found to be associated with

receiving favourable arbitration results, as per large businesses of over 200 staff. This would suggest that they are administering dismissals similarly to large business and being treated as large organisations by the arbitrators.

H_4 *There is a significant difference between businesses with a human resource expert and those without a human resource expert in relation to arbitration outcomes.*

The fourth hypothesis was supported by finding differences, statistically significant, between firms with HR experts and those without HR experts and their arbitration decisions. As would be anticipated, firms with an HR expert are more likely to receive a favourable outcome. A number of authors suggest that HR expertise is essential for navigating the successful dismissal of an employee (Goodman et al. 1998; Pratten & Lovatt 2005). In organisations void of a HR expert, which in most instances are the smaller operations, the locus of control reverts to owners or managers who, in using informal practices and arbitrary decision making (Head & Lucas 2004) risk denying 'procedural justice' to the employee during a discipline and/or termination process (Earnshaw, Marchington & Goodman 2000). The previous hypothesis found that business owners employing up to 50 staff were associated with favourable arbitration outcomes. This suggests errors in procedural justice may well be tolerated by AIRC commissioners based on the legal requirement to consider business size and the availability of HR expertise. It is not considered though that this finding devalues the role of HR experts in SMEs, as it appears that arbitrators are not as tolerant of miscarriages of justice by medium sized

organisations of between 51 and 100 employees (nearly all of which had not appointed human resource specialists).

The above point takes this discussion to noting a proxy potential between the chi-square test for $\boldsymbol{H}_3$ and $\boldsymbol{H}_4$. A review of the stacked column graphs in Figures 5.3 and 5.5 and their subsequent contingency tables reveals that the statistical counts and values are almost identical. That is, the X-axis categories 'SMEs' and 'Large (business)' in Figure 5.3 can be substituted with 'No Inhouse Experts' and 'Inhouse HR Experts' respectively, in Figure 5.5. This is because nearly all SMEs are without inhouse HR experts and nearly all large businesses have inhouse HR experts.

Therefore the chi-square examining the association of HR expertise with an arbitration outcome is testing, by default, the association of business size with an arbitration outcome. Previous research identified in the literature review provides logical reasons for the $\boldsymbol{H}_4$ finding that HR expertise is associated with positive outcomes for the employer. The origin of these discussions on HR expertise and grievance activity is the 'formal HR' of large business versus the 'informal HR' of small business debate (Kotey & Sheridan 2004; MacMahon & Murphy 1999; Marlow & Patton 2002; Mazzarol 2003; Wagner 1998). It is clear from the statistics in this research that the issue of business size, HR expertise and grievance activity are linked intrinsically and that the role of HR expertise in grievance activity and arbitration cannot be considered as a factor exclusive from the size of the business.

6.1.3 Research Question Two: Discussion

The research question is: is the occupational skill level of the aggrieved employee associated with the outcome of a grievance settled by arbitration? The statistical hypothesis for this question with its ensuing discussion follows.

H_5 *There is a significant difference between grievants from lower skilled occupations and those from intermediate and higher skilled occupations in relation to arbitration outcomes.*

This hypothesis was supported by the results of the chi-square test. This hypothesis provides one of the most interesting findings of the study, given the limited studies pertaining to the issue of occupation or skill level found as part of the literature searches. This study discovered that employees in the lower skilled occupations, which would be jobs performed such as labouring, sales assistants, filing clerks, telemarketers, guards, cleaners or kitchen hands, are associated with gaining favourable arbitration outcomes. The results suggest a further trend, with intermediate skill level occupations, which would include jobs such as all forms of tradespeople, secretaries, plant operators, drivers, storepersons or accounting clerks are less likely to win their case compared to lower skilled workers. However, they are more likely to win a case than the higher skilled workers. It is the higher skilled workers that are associated strongly with unfavourable arbitration outcomes. Higher skilled workers include occupations such as engineers, accountants, technical officers, chefs, nurses, police, musicians, teachers and managers.

Previous studies sourced on the issue of occupation and subsequent grievance arbitration were found in the research conducted by Caudill and Oswald (1992) and Cappelli and Chauvin (1991). The findings of this research does not support these previous studies, with both suggesting that tradespeople, semi-skilled, supervisory and professional positions (approximately the intermediate and higher skill levels of this study) are more successful at arbitration than lower skilled occupations.

The literature review pertaining to the state of the Australian labour market suggests that the country has insufficient numbers of people to do the work and that people are under pressure to up-skill at an unprecedented speed (Jorgensen 2005a). Several authors over the last decade have noted that labour demand in Australia is for mostly highly skilled workers such as managers, professionals and para-professionals (Gollan, Pickersgill & Sullivan 1996; Kelly & Lewis 2001; Lewis 2004). The state of the labour market and its influence on grievance activity was investigated by Cappelli and Chauvin (1991) who suggest that labour market factors influence employee engagement in grievance activity, with more competitive markets being a predictor that employees are more likely to lodge a grievance. In terms of lodging a grievance, the research conducted for this thesis found that higher skilled and intermediate skilled occupational groups had frequency counts that were higher (78 and 120 claims respectively) whereas the lower skilled occupational group filed the least number of claims (at 67). These descriptive statistics suggest that the competitive labour market has provided an environment for the higher skilled workers to lodge an unfair dismissal claim, even though they are more likely to be unsuccessful.

This study's finding that higher skilled workers are unlikely to be successful at arbitration might be explained by the suggestion that within the tight labour market, employers maintain higher skilled workers and would not terminate their employment unless absolutely essential. The association between higher skilled workers and unfavourable outcomes is potentially occurring because the majority of cases which make it to arbitration are those where the employee warranted dismissal for fair, just and reasonable circumstances.

The converse of this situation appears to be occurring for people in lower occupational skills groups, that is, filing the least number of claims but having the highest number of favourable arbitration claims. Kelly and Lewis (2001) and Lewis and Ong (undated) describe Australian low skilled workers as facing reducing work opportunities and redundancies because of automation and organisational demands for productivity improvements. It is contended that the success of lower skilled dismissed employees is related to the practices used to dismiss them, which may include ill conceived redundancy practices. Further support for this assertion is found in the hypothesis results for the next question pertaining to reason for dismissal, in which redundancy is associated clearly with favourable arbitration outcomes for the aggrieved employee.

6.1.4 Research Question Three: Discussion

The question is: is there an association between the reason dismissed and the outcome of the arbitration hearing? The statistical hypothesis for this question with its ensuing discussion follows.

H_6 *The reason for dismissal is associated with the arbitration outcome.*

Support was found for this hypothesis, with redundancy being associated strongly with the aggrieved employee gaining a favourable arbitration outcome. Conversely, employees dismissed because of serious misconduct are associated with receiving unfavourable arbitration outcomes. Several studies found that severity of the behaviour leading to the dismissal was a predictive factor of the arbitration decision (Bemmels 1990; Chelliah & D'Netto 2006; Dalton & Todor 1985a) and this finding aligns to that suggestion. However, a challenge is the definition of 'severity'. For example, in this research, severity referred to 'serious misconduct' and included criminal activity, wilful damage, drunkenness, and brawling. The collection of these behaviours is associated with the employee receiving unfavourable arbitration results. The Chellah and D'Netto study identified severity as acts of theft and fraud, which were found to be predictors of the arbitration outcome. However, separate to this, the Chellah and D'Netto study suggested that alcohol related offences, insubordination, and violation of rules were not found to be predictors of a negative arbitration outcome for the grievant. Thus, whilst severity appears to explain the reason for receiving an unsuccessful outcome on the behalf of the grievant, the types of behaviours that define severity is varied between studies.

The finding that redundancy is associated with the aggrieved employee receiving a favourable arbitration result warrants further comment. Redundancy is the only form of dismissal that occurs outside a discipline context, instead occurring as a result of management's prerogative to manage its establishment numbers for the good of the business. The finding in this study is that on a significant number of occasions, arbitrators overturn management decisions when redundancy is the reason purported

for the dismissal. Earnshaw and Marchington (2000) concluded that arbitrators use as the deciding factor whether or not the employer had acted reasonably and *not* the reason for the dismissal, and in conjunction with the Workplace Relations Act requiring the arbitrator to determine if a dismissal was harsh, unjust or unreasonable, it would suggest that employers are not conducting redundancy processes in an appropriate manner.

6.1.5 Research Question Four: Discussion

The research question is: does the aggrieved employee's gender bear association with arbitration outcomes? The first of two statistical hypotheses for this question with its ensuing discussion follows.

***H*$_7$** *There is a statistically significant difference between male and female grievants in relation to having grievance arbitration cases rejected for being outside jurisdiction.*

The statistical test for this hypothesis provided the second occasion in this study where the results support the rejection of the alternative hypothesis. There is no statistically significant association between the gender of the grievant and whether or not they have cases rejected for being outside jurisdiction. The premise of the alternative hypothesis was that females are employed in part time and casual work more so than males (Australian Bureau of Statistics 2006). And, given that many casual employees are jurisdictionally barred from using the arbitration services of the AIRC it was hypothesised that there would be a difference between the genders on being denied arbitration. However, the statistical results do not provide support for this reasoning.

H_8 *There is a statistically significant difference between male and female grievants in relation to arbitration outcomes.*

The chi-square results supported this statement. Further, the analysis suggests that female grievants are associated with receiving favourable arbitration decisions. Knight and Latreille (2001) in their examination of gender effects in arbitration outcomes mooted that women are either at the end of unfavourable treatment in the workplace or that arbitrators are biased. The literature review presented subtle ways in which women might receive less favourable treatment in the workplace. It discussed that within the western traditions of a 'masculine' type workplace (Watson, J. & Newby 2005), women are provided less learning opportunities (Cahoon 1991) but at the same time given less tolerance for mistakes (Larwood et al. 1979 in Dalton & Todor 1985b). It is therefore contended that women may be terminated for what their employer perceives to be performance deficiencies, however the merits of the employer's case is not standing up to scrutiny by an arbitrator.

This finding contributes to the debate over gender effects in judicial settings where mixed results have caused researchers to suggest further study on the issue. Studies by Dalton and Todor (1985b), Caudill and Oswald (1992) and Knight and Latreille (2001) found female grievants were treated more leniently than male grievants in the arbitration of dismissal claims. This research adds to this list of studies supporting the presence of gender effects in dismissal arbitration favouring female grievants. Contrary to these findings are studies by Bemmels (1990) and (Dalton, Owen &

Todor 1986) that report there is no statistical difference between male and female grievants in the outcomes of their hearings.

6.1.6 Research Question Five: Discussion

The research question is: does the arbitrator's gender bear association with the decisions they make on unfair dismissal claims? The first of two statistical hypotheses for this question with its ensuing discussion follows.

***H*$_9$** *There is a statistically significant difference between male and female arbitrators in relation to their arbitration decisions.*

The chi-square test suggests that male arbitrators are associated with finding in the grievant's favour and the female arbitrators are associated with finding in favour of the employer. This finding is in line with the Bemmels' (1991b) and Dalton and Todor's (1985a) studies into the influence of arbitrator characteristics on their decisions. The Bemmels study supports the first of this hypothesis' findings that male arbitrators gave more lenient penalties to grievants. Bemmels suggests that the issue of the arbitrator's gender needs to be considered in combination with other arbitrator characteristics such as education, experience and employment background. Secondly, the Dalton and Todor's study supports somewhat the finding that female arbitrators are tougher than male counterparts on the grievant where they suggest that she is more likely to find in favour of the employer *when* petitioned by a male advocate. Dalton and Todor suggest the issues of severity of offence and viability of the case are further factors that explain arbitration results.

The literature review identified the debate in Australia about bias in the AIRC regarding whether commissioners are sympathetic to the plight of the aggrieved employee or the employer organisation. The findings suggest that there is a bias demonstrated with male arbitrators favouring the workers and females favouring the employers. However whether this can be explained by the background of the commissioners, as per much of the debate about bias in the AIRC cannot be answered by these tests. What this finding contributes is support for the suggestion that some level of 'unconscious prejudice' (Mason 2001) for the plight of employers or aggrieved employees could exist in spite of the arbitrators believing they are not prejudiced.

H_{10} *There is a statistically significant difference between male and female grievants in relation to the arbitration decisions handed to them by male arbitrators.*

The statistical analysis supported the final hypotheses of this study. It was already found that female grievants are more likely to receive a favourable outcome over male grievants in H_8 and H_9 subsequently found that male arbitrators are likely to favour the grievant over the employer. This final hypothesis confirms the logical combination of the previous two results by finding that female grievants are most likely to receive outcomes favourable if they appear before a male arbitrator. The amount of research on arbitrator gender is quite limited with studies tending to focus on instead the grievant's gender. However, the Bemmels (1991b) study found statistical support for male arbitrators finding in the favour of female grievants more often. This study's findings indicate gender bias occurring amongst the unfair

dismissal arbitrators in the AIRC. Two questions need to be addressed in an attempt to explain this finding. These questions being, first, does this reflect a reality that female grievance claims are being upheld because females are subject to harsh treatment in the workplace, thus the arbitrator's gender is of no consequence? Alternatively, did the finding occur because arbitrators' are more sympathetic to, or influenced by, the plight of a female in despair?

In response to the first question, the Workplace Relations Act and the public relations of the AIRC promote that it is a neutral body providing an unbiased service (CCH Australia Ltd 2005a; Giudice 2002). This being the case, it would suggest that compared to men in the workplace, women are receiving success rates proportionally higher at arbitration because they are subject to unscrupulous dismissal tactics by their employers. On this point, a discussion concerning some of challenges for women in the workplace was presented previously for H_8. This may provide some or all of an explanation to the finding.

In response to the alternative question, biased decision making could be part of the explanation and the literature review drew on the work of Kirby (1999), Mason (2001), Sangha and Moles (1997), Klass and Feldman (1994) and Seamone (2002) to support the suggestion that inconsistency and bias in arbitral decision making is possible theoretically, particularly at an unconscious level on the behalf of the arbitrator. If the first explanation for the identified gender effects is discounted (that is, harsher treatment for women being dismissed), then an unidentified variable/s is occurring consistently with male arbitrators that influences their determinations with female applicants. The types of characteristics identified as potential explanatory or

moderating variables could be the arbitrator's education, experience and employment background (Bemmels 1991b) or the severity of offence and viability of the case (Dalton & Todor 1985a). In addition to these suggestions, it is posited that cultural factors could be further explanatory variables for favouritism for female grievants or conversely neglect for male grievants. As a suggestion, it may be that in western cultures, with masculine values in business, that arbitrators have an intuitive, caring - 'paternal' approach to female grievants or moreover, an individualistic, aggressive - 'competitive' approach to male grievants.

6.2 Conclusions

The final conclusions based on the discussions for each of the research questions are presented in this section. Using the statistical results and the preceding discussions as a basis, these conclusions contain assertions that are posted as plausible explanations for the findings as well as implications that may arise from the findings.

Question one pertained to determining whether industry sector and business size are associated with the arbitration outcome. Four characteristics were examined to address this question: industry sector; jurisdiction; business size; and HR expertise. The results suggest that of these four characteristics, only one, the industry sector in which the arbitration claim originates, was *not* associated significantly with the arbitration outcome. This finding indicates consistency in the use of HR practices to administer dismissals across industries, with employees in no particular industry sector being at a disadvantage. However, concerning the next variable, jurisdiction, the number of cases rejected for being outside jurisdiction was found to be not consistent across industries. Employees in the trade related sector are particularly

exposed to not getting their grievance heard before arbitration because their cases fall outside the jurisdictional powers of the AIRC. This could be an indication that employees in the retail and wholesale trade need to be more vigilant at obtaining advice on the suitability of their claims before filing with the AIRC, and for union bodies to provide additional support in this industry sector. Furthermore, for policymakers, this finding indicates that industries high in casual employees are receiving less workplace justice when it comes to termination of the employment contract.

In terms of the characteristic, business size, it was found to be associated with the arbitration outcome. Employees in businesses of up to 50 staff are unsuccessfully defending their unfair dismissal claims. From the employer perspective, this shows support for informal HR practices of small business when scrutinised by an arbitrator. However, it appears that once a business employs over 50 staff the empathy of the arbitrator for the limited HR expertise and resources that exists for smaller businesses, gives way to expectations that formality should be adopted, similar to those in larger organisations. Harris (2002) suggested that 100 employees was the 'critical threshold' for appointing a HR specialist in a movement towards formalising HR management. In terms of unfair dismissal, it may be that businesses of over 50 employees could benefit from implementing formal discipline and grievance processes, providing arbitrators with indications that the business has approached the dismissal with neutrality and procedural fairness in mind (Southey 2007b). Formal procedures in dismissing an employee include a range of actions. For example, conducting full workplace investigations into claims and providing time for the employee to respond to an accusation. If dealing with a performance

issue, setting a timeframe to improve performance and providing remedial assistance or training. Allowing the employee to have a representative of their choosing present during interviews also provides indication of a just process. It is paramount that the employee is made aware of the seriousness of the matter and that they are being engaged in a disciplinary process. Dismissal should not be the intention of the process; rather it should be one of the options resulting from the discipline process. Finally, documenting the process including furnishing file copies to the employee, provides evidence of the steps taken to provide a procedurally fair process.

Employees of large businesses (over 200 staff) are losing significantly more cases than they are winning. This indicates that large employers are defending successfully their termination decisions. Large businesses are likely to have at their disposal the financial resources and HR expertise to administer their dismissal and assemble a defence in times of an unfair dismissal claim, which puts employees of these businesses at a disadvantage. The final characteristic, HR expertise, further supports this suggestion, with the presence of HR expertise associated with favourable arbitration for the employer. The formal power of large businesses disadvantages the single employee without formal power or industrial relations expertise when challenging their employment contract (Southey 2007a). It serves employees to counter-balance the power of management in a large business through the use of union or advocacy services when claiming unfair dismissal.

The second research question sought an answer as to whether the occupational skill level is associated with the arbitration outcome, with the finding suggesting this to be the case. It shows that as the occupational skill level of the grievant increases the less

likely they are to defend successfully their unfair dismissal claim. It is concluded that people in lower skilled occupations are subject to tougher dismissal practices which are being noticed by the arbitrators, thus restoring justice to them by finding in favour of their claims. Tough dismissal practices involves not providing procedural fairness in the dismissal process, such as not conducting proper and full investigations regarding claims, not providing opportunity to respond to claims or to have a representative present at meetings, making employees aware of policies and regulations, or not providing training opportunities to overcome performance issues. With the trend showing an increase in the employers' ability to defend the dismissal of their staff as the skill level of the employee increases, it is concluded the practices and processes used to dismiss people increases in procedural fairness as employee skill level increases. The basis of this different treatment may be the tight labour market as noted in the discussions in section 5.1.3 where in Australia, the aggressive competition for high skilled employees may mean that employers are prepared to only dismiss their highly qualified staff after ensuring they have exhausted discipline or development avenues with such actions withstanding arbitrator scrutiny.

The aim of the third research question was to examine whether the reason for the dismissal is associated with the arbitration outcome. The evidence found that people made redundant are associated strongly with receiving a favourable arbitration outcome. It is concluded that arbitrators scrutinise the reason and process used to execute a redundancy plan and the association with arbitration decisions that overturn the employers' actions would suggest that employers frequently use redundancy as a guise for terminating unsuitable employees. It is also concluded in this study that employees dismissed for behavioural offences such as drunkenness,

brawling, wilful damage and criminal activity can anticipate being unsuccessful in an arbitration claim.

The fourth research question sought an answer regarding the existence of an association between the gender of the grievant and the arbitration outcome. First, there is some good news to be deduced from the finding that no significant difference occurs between the grievant genders in submitting claims rejected for being outside jurisdiction. This bears well for women for whom it was suggested may be disadvantaged in getting a case heard because of their proliferation in casual employment (and casual employees without regular hours are outside AIRC jurisdiction).

Secondly, in terms of fully arbitrated dismissal decisions, the genders significantly differ in relation to the outcomes they receive, with female grievants associated with gaining favourable decisions. If women are more likely to prove their claims of unfair dismissal, there is something commonly occurring to females (and not males) in the workplace giving them a sound case to convince an arbitrator to overturn their employers' actions. What this 'something' could be is that women contend with lesser opportunities for learning and training (particularly as women dominate part-time and casual work) and/or receive less tolerance than male workers when mistakes are made. While other authors have made a similar deduction regarding favourable outcomes for women (Knight & Latreille 2001), an alternative explanation might be that male grievants are being treated more harshly by arbitrators. It cannot be assumed that because the results show favouritism towards females, that male grievants are therefore receiving appropriate outcomes. It could be

that the female findings are the ‘norm’ and males are being treated more harshly in arbitration. Therefore the results may be alternatively indicating that it is something not occurring in the workplace that is causing the variation between the genders, but rather the arbitrators are biased in favour of women. This is addressed further in the following research question.

The final question pondered whether male and female arbitrators made different arbitration decisions. Based on the statistical analysis that found a significant difference, it can be concluded that aggrieved employees seeking arbitration will want a male arbitrator and responding employers will benefit from having a female arbitrator. Furthermore, female grievants are more likely to receive a favourable outcome from a male arbitrator. This research adds to several studies that found in favour of gender effects in arbitration. (The statistics did not contain enough count data to commentate confidently on female arbitrator association with grievant gender.) Whether the reason gender effects occur is because of biased decision making by the arbitrator, or because of factors occurring in the workplace is unknown. The finding suggests the existence of variable(s) occurring in the male arbitrator and female grievant exchange that gives the female gender the advantage over males. One suggestion to explain a gender bias exhibited by male arbitrators, as mooted in the discussion in section 5.1.6, could be that in western cultures with masculine business related values, male arbitrators may exhibit competitive expectations towards male grievants and a paternal approach to female grievants. Awareness sessions for Commission members may further alert arbitrators of the subliminal impact of gender on their frame of reasoning.

6.3 Policy Implications of this Research

Points of interest uncovered in this research that provide insight for policy makers is first that employees in the trade related sector are experiencing significant rejection of claims due to jurisdictional barriers. This sector contains the retail trade which is the highest employer of casual employees. The implication of this is that a section of Australia's workforce, the casual employee, is at a disadvantage when it comes to having a forum for dealing with felt workplace injustice. This could also be an indication that employees in the trade related sector are not accessing or have at their disposal, easy access to employee advocacy and advice services.

Second, the results of this study identify a weakness in businesses of over 50 staff for experiencing high losses in dismissal arbitration. This study also indentified for all businesses that redundancies are not being successfully defended by employers before the Commission. Small business associations and chambers of commerce can act upon these findings in terms of providing assistance to businesses to educate and assist in the development of formalised discipline procedures and redundancy practices for its members.

Of further importance is the finding that businesses employing between 50 and 100 employees are vulnerable at the arbitration table. This is significant for the Rudd Government policy makers who have the responsibility of overhauling the current Australian unfair dismissal legislation. With the aim of improving job growth, it clearly registered on the Howard government's radar as a business size that could benefit from being freed of unfair dismissal regulations and by making the exemption as high as a 100 employee threshold, the Howard government

incorporated those businesses which are more likely, according to this study, to experience a tougher time at the arbitration table in comparison to larger business counterparts. Thus, for the Rudd Government this study provides statistical evidence that people from the 50 to 100 business size are at serious disadvantage under the current 100 employee exemption.

6.4 Further Research

It is noted that this is a descriptive study that used chi-square tests to indicate association between variables in unfair dismissal arbitration within an Australian context. Having found which variables are associated with arbitration decisions, explanatory quantitative analysis involving logistic regression will indicate whether these inherent characteristics have predictive qualities. International comparative studies could also be conducted with a view to identifying the outputs that different legislation/arbitration frameworks produce from other countries.

A table was prepared as part of the literature review (Table 2.1 Social Science Theories and their Potential Application in Workplace Grievance Research) providing a range of social science theories that could be used as models for conducting explanatory studies of grievance activity. The table contained initial connections between the theories and their application to grievance activity which could be used as catalyst for theoretically based research projects.

This research identified a weakness for employees in the trade related sector (that is, retail and wholesale trade industries) by not getting their cases past jurisdictional barriers of the AIRC. Research is suggested to further explore, first the role of unions

in this sector and second, the assertion in this study that the jurisdiction issue is attributable to the high percentage of casual workers in this sector. It is of value to pursue this issue as it represents a demographic of the Australian workforce who are receiving a lower standard of workplace justice when it comes to termination of the employment contract (the other demographic being businesses of less than 100 employees as per the current legislation which is expected to be reviewed by the Rudd Government).

Further exploration of the relationship between HR expertise, business size and arbitration outcomes to address the proxy issue faced with quantitative analysis is suggested. Such research would need to discern how those SMEs *with* HR experts conduct discipline, provide grievance processes and how they perform at arbitration in comparison to large businesses *without* HR experts. The data collected in this research did not provide sufficient frequency counts of businesses meeting these criteria to conduct sound statistical tests and it is anticipated this will be a problem for future quantitative researchers. Thus qualitative research on this issue may need to be utilised to gain a further understanding of the impact and value of HR expertise on grievance activity across business sizes.

The relationship between occupational skill levels and arbitration outcome is an area of very limited research. The significance of understanding the interactions between these variables is that it serves as an indicator of the treatment of people in the workplace, according to a hierarchy of skills. The study revealed a trend which warrants investigation to further understand the influence of other variables, such as labour market conditions, industrial relations savvy of various skilled employees,

union involvement and discipline processes used by employers dismissing employees, particularly lower skilled employees.

The administering of redundancy, as evidenced in this study, would benefit from further research. Research could compare the understanding and practices used by employers to make employees redundant in comparison to legal requirements or 'best practice'. The view is to assist employers understand the appropriate situations in which to engage in redundancy, and a procedurally fair process to administer it.

This research raised several questions pertaining to bias by the commissioners in their decision making. As bias in the AIRC is a highly debated topic within the Australian media, it would be opportune to conduct statistical analysis into the employment backgrounds and appointing political party of the AIRC commissioners to determine whether this bears a relationship with their decisions towards either the worker or employer.

Furthermore, in relation to bias shown towards female grievants by male arbitrators, several questions need exploration. In consideration of the possibility that females are being treated more harshly, a comparative study of the working conditions of males and females who have made unfair dismissal claims would be worthwhile. Aspects such a training opportunities, type of work performed, tolerance for errors; and processes used to dismiss them could provide some initial characteristics for further investigation into their workplace situations.

Another dimension of research on the issue of bias could be to consider the influence of cultural values on arbitrators. Such values, as a starting point, may be the masculine/feminine traits associated commonly with behaviours in the workplace. The theoretical hypothesis of this research would be to not assume women are being favoured by arbitrators, but rather that the favourable findings towards women are the norm and that men are being treated more harshly by arbitrators.

6.5 Chapter Six Summary

It appears that human resource practices used by employers to administer dismissal, across industries, is placing no particular set of employees from an industry sector at a disadvantage. However, employees in the trade related sector could benefit from obtaining advice on the suitability of their claims before filing with the AIRC to avoid out of jurisdiction claims. Business size is associated significantly with arbitration outcomes and it was concluded that businesses of over 50 employees are at a critical size to implement formal disciplinary and grievance processes. This opens the issue of human resource expertise, as formalised discipline and dismissal procedures are likely evidence of inhouse human resource expertise and nearly all large businesses have human resource managers. Whether or not it is a consequence that large businesses have stronger performance at arbitration compared to smaller business counterparts is beyond the statistical tests performed in this study, however, a statistically significant association occurs between the presence of HR expertise, large businesses (over 200 staff) and favourable outcomes for the business.

Discussions in this chapter also considered the impact that the current Australian labour market may have on the discipline and dismissal treatment of people

according to their occupational skill level with the discovery that higher skilled employees are not as successful as lower skilled employees at claiming unfair dismissal. This suggests employers could be treating employees in lower skilled positions more harshly than higher skilled employees when administering discipline and dismissal. It was also identified that the dismissal of employees through redundancy is perhaps being used by employers as ruse for getting around dismissal provisions.

The gender of the aggrieved employee and the arbitrator indicates that different outcomes are occurring at the arbitration table with female grievants being more successful. This finding ignited a discussion as to whether females are being exposed to unfavourable treatment in the workplace or alternatively, whether females are treated similarly to males in the workplace only to have male grievants exposed to harsher treatment in arbitration. With the arbitrator's gender indicating association between male arbitrators and favourable decisions to female grievants it was suggested gender affects may be occurring at the arbitration table.

Several policy implications of this research were identified. The major implication related to the current federal government's proposed legislative reforms of unfair dismissal provisions. This study indentifies employees from businesses of 50 to 100 workers are vulnerable to tougher dismissal practices as well as lower skilled employees. Identified also was the need for training for businesses to engage in procedurally fair redundancy, discipline and dismissal processes and gender bias awareness for arbitrators. The representation of casual employees in the workplace,

particularly in terms of accessing advice and assistance was also noted as a policy issue.

The chapter concluded with a discussion of areas for further research and it was noted that scope existed for further application of social science theories as possible explanatory models of aspects of the grievance process. Given that this study is exploratory and descriptive, a number of the independent variables examined in it provide scope for predictive analysis on the dependent variable, arbitration outcome. The variables warranting further analysis are occupational skill level, business size, reason for dismissal and gender. Further descriptive research could also be conducted in terms of international comparatives with a view to identifying the outputs that different legislation/arbitration frameworks produce. Several of the independent variables could also lead into avenues of research beyond the questions examined in this study. For example, research could be conducted with the aim of obtaining further understandings of successful and unsuccessful redundancy practices in Australian business, and the discipline of employees in the workplace according to their position in the skill hierarchy.

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APPENDIX ONE:

DATA FREQUENCY COUNTS AND PERCENTAGES FOR EACH CATEGORY WITHIN THE VARIABLES USED IN THE STATISTICAL ANALYSIS

Appendix 1:Table 1 Arbitration Decision - Data Counts

Variable	*Frequency*	*Percent*	*Cumulative Percent*
NOT in Grievant's Favour	252	65.6	65.6
IN Grievant's Favour	132	34.4	100.0
Total	384	100.0	100.0

Appendix 1:Table 2 Jurisdictional Barriers - Data Counts

Variable	*Frequency*	*Percent*	*Cumulative Percent*
Case was heard within AIRC Jurisdiction	274	71.4	71.4
Case rejected as it was outside AIRC Jurisdiction	110	28.6	100.0
Total	384	100.0	

Appendix 1:Table 3 Industry Sector in which Grievant Worked - Data Counts

Variable/Category		*Frequency*	*Percent*	*Cumulative Percent*
Product Related Sector	Agriculture, Forestry and Fishing	8	2.1	2.1
	Mining	11	2.9	4.9
	Manufacturing	81	21.1	26.0
	Electricity, Gas and Water Supply	3	.8	26.8
	Construction	28	7.3	34.1
	Sub total for Product Related Sector	*131*	*34.2*	*34.1*
Trade Sector	Wholesale Trade	8	2.1	36.2
	Retail Trade	36	9.4	45.6
	Sub total for Trade Related Sector	*44*	*11.5*	*45.6*
Service Related Sector	Accommodation, Cafes and Restaurants	22	5.7	51.3
	Transport and Storage	41	10.7	62.0
	Communication Services	12	3.1	65.1
	Finance and Insurance	6	1.6	66.7
	Property and Business Services	37	9.6	76.3
	Government Admin and Defence	26	6.8	83.1
	Education	23	6.0	89.1
	Health and Community Services	25	6.5	95.6
	Cultural and Recreational Services	11	2.9	98.4
	Personal and Other Services	6	1.6	100.0
	Sub total for Service Related Sector	*209*	*54.3*	*100.0*
Total		384	100.0	100.0

Appendix 1:Table 4 Business Size – Data Counts

Variable/Category		*Frequency*	*Percent*	*Cumulative Percent*
SME Up to 50	10 or less employees	12	3.1	5.3
	11 to 25 employees	13	3.4	11.1
	26 to 50 employees	27	7.0	23.0
	Sub total SME up to 50 staff	*52*	*13.5*	*23.0*
SME 51 to 100	51 to 100 employees	29	7.6	35.8
	Sub total SME with 51 to 100 staff	*29*	*12.8*	*35.8*
SME 101 to 200	101 to 200 employees	25	6.5	46.9
	Sub total SME with 101 to 200 staff	*25*	*11.1*	*46.9*
Large Over 200	201 to 500 employees	21	5.5	56.2
	501 to 1,000 employees	18	4.7	64.2
	1,001 to 10,000 employees	44	11.5	83.6
	Over 10,000 employees	37	9.6	100.0
	Sub total large business over 200 staff	*120*	*53.1*	*100*
Valid Total		226	58.9	
Missing		158	41.1	
Total		384	100.0	100.0

Appendix 1:Table 5 Availability of Human Resource Management Expertise – Data Counts

Variable	Frequency	Percent	Cumulative Percent
Inhouse HR Experts	188	60.4	60.4
No Inhouse HR Experts	123	39.6	100.0
Valid Total	311		
Missing	73		
Total	384	100.0	100.0

Appendix 1:Table 6 Occupational Skill Level – Data Counts

Variable/Category		Frequency	Percent	Cumulative Percent
Higher Skilled	Managers and Administrators	23	6.0	6.3
	Professionals	31	8.1	14.8
	Associate Professionals	38	9.9	25.2
Sub total for higher skilled occupations		*92*	*24.0*	*25.2*
Intermediate Skilled	Tradespersons and Related Workers	40	10.4	36.2
	Advanced Clerical and Service Workers	25	6.5	43.0
	Intermediate Clerical and Service Workers	47	12.2	55.9
	Intermediate Production and Transport Workers	74	19.3	76.2
Sub total for intermediate skilled occupations		*186*	*48.4*	*76.2*
Lower Skilled	Elementary Clerical, Sales and Service Workers	24	6.3	82.7
	Labourers and Related Workers	63	16.4	100.0
Sub total for lower skilled occupations		*87*	*22.7*	*100.0*
Valid Total		365	95.1	
Missing		19	4.9	
Total		384	100.0	100.0

Appendix 1:Table 7 Reason Dismissed – Data Counts

		Frequency	Percent	Cumulative Percent
Serious Misconduct		97	25.2	25.2
Sub total for serious misconduct		*97*	*25.2*	*25.2*
Performance and/or attitude		74	19.3	44.5
Sub total for performance and/or attitude		*74*	*19.3*	*44.5*
Employee was made redundant		78	20.3	64.8
Sub total for redundancy		*78*	*20.3*	*64.8*
Other Reasons	No dismissal because employee resigned	40	10.4	
	Employee was casual/short term contract/trainee/apprentice	53	13.8	
	Employee was on probation	18	4.7	
	Employee was medically unfit	13	3.4	
	Other eg, abandoned employment	11	2.9	100.0
Sub total for other reasons		*135*	*35.2*	*100.0*
Total		384	100.0	

Appendix 1:Table 8 Grievant's Gender – Data Counts

Variable	*Frequency*	*Percent*	*Cumulative Percent*
Male	273	71.1	71.1
Female	111	28.9	100.0
Total	384	100.0	

Appendix 1:Table 9 Arbitrator's Gender – Data Counts

Variable	*Frequency*	*Percent*	*Cumulative Percent*
Male	326	84.9	84.9
Female	58	15.1	100.0
Total	384	100.0	

APPENDIX TWO:
VALUE LABELS AND RAW DATA

Grievant Gender

1	*Male*
2	*Female*

Arbitrator Gender

1	*male*
2	*female*

Year

5	*2004*
6	*2005*

Arbitration Outcome

1	*NOT in grievant's favour*
2	*IN grievant's favour*

Industry

1	*Agriculture, Forestry and Fishing*
2	*Mining*
3	*Manufacturing*
4	*Electricity, Gas and Water Supply*
5	*Construction*
6	*Wholesale Trade*
7	*Retail Trade*
8	*Accommodation, Cafes and Restaurants*
9	*Transport and Storage*
10	*Communication Services*
11	*Finance and Insurance*
12	*Property and Business Services*
13	*Government Administration and Defence*
14	*Education*
15	*Health and Community Services*
16	*Cultural and Recreational Services*
17	*Personal and Other Services*

Jurisdiction

1	*Case heard within AIRC jurisdiction*
2	*Case rejected as it was outside AIRC jurisdiction*

Business Size

1	*10 or less employees*
2	*11 to 25 employees*
3	*26 to 50 employees*
4	*51 to 100 employees*
5	*101 to 200 employees*
6	*201 to 500 employees*
7	*501 to 1,000 employees*
8	*1,001 to 10,000 employees*
9	*over 10,000 employees*

VALUE LABELS AND RAW DATA (continued)

Skill Level

1	*Managers and Administrators*
2	*Professionals*
3	*Associate Professionals*
4	*Tradespersons and Related Workers*
5	*Advanced Clerical and Service Workers*
6	*Intermediate Production and Transport Workers*
7	*Elementary Clerical, Sales and Service Workers*
8	*Labourers and Related Workers*

Reason

1	*Serious Misconduct*
2	*Performance and/or Attitude*
3	*No dismissal because employee resigned*
4	*Employee was casual/temporary/trainee/apprentice*
5	*Employee was on probation*
6	*Employee was made redundant*
7	*Employee was medically unfit*
8	*Other, eg, abandoned employment*

HR Expertise

1	*In house HR experts*
2	*Not able to be determined (missing)*
3	*No Inhouse HR expert*

RAW DATA TABLE

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
942375	Bay Tavern	2	5	8	3	Restaurant Manager	5	2	.	.	2	1	1
942415	Palm Sprins Ltd	2	5	7	6	Customer Service Sales	3	2	92	4	1	1	1
942483	Telstra	1	5	10	6	Customer Field Officer	6	1	40,000	9	1	2	1
942590	Woodside Energy	1	5	2	.		7	1	3,200	8	1	1	1
942591	Kalari Pty Ltd	1	5	9	7	Tanker Driver	1	1	215	6	3	1	2
942601	Rheem Australia	2	5	3	9	Factory Worker	2	1	1,208	8	1	1	1
942647	Doors Plus	1	5	7	8	Salesperson	5	2	200	5	3	1	1
942741	Fletcher International	1	5	1	9	Labourer	7	1	.	.	2	1	1
942762	Centrelink	1	5	13	3	Customer Service Supervisor	1	1	27,000	9	1	2	1
942985	Carbonrib Co	2	5	6	6	Sales Representative	3	2	.	.	2	1	1
943000	ABB Australia	1	5	4	4	Electrician	2	1	1,690	8	1	1	2
943289	Golden Valley Lodge	1	5	16	9	Janitor	3	2	.	.	3	1	1
943350	Universal Scaffolding	1	5	5	4	Scaffolders	6	1	10	1	3	1	1
943350	Universal Scaffolding	1	5	5	4	Scaffolders	6	1	10	1	3	1	1
943350	Universal Scaffolding	1	5	5	4	Scaffolders	6	1	10	1	3	1	1
943363	Lethlain Pty Ltd	2	5	7	6	Sales Assistant	1	1	.	.	3	2	2
943395	Qantas	1	5	9	6	Flight Attendant	1	1	38,000	9	1	1	1
943398	Amcor Flexible	1	5	3	7	Print process worker	6	1	27,243	9	1	1	1
943533	Downer EDI Limited	1	5	3	9	Furnace Operator	1	1	184	5	1	1	1
943534	Auto Group Limited	2	5	7	8	Vehicle Salesperson	3	2	70	4	2	1	1
943600	Nationwide Oil	1	5	3	7	Process Operator	2	1	165	5	3	2	1
943710	FMP Group	2	5	3	9	Factory Worker	1	1	500	6	1	2	2
943799	Quality Images	1	5	12	3	Warehouse Manager	3	1	55	4	3	2	2
943868	AAMI	2	5	11	6	Customer Service Officer	3	2	2,900	8	1	1	1
943950	Jenny Craig Weightloss	2	5	17	3	Centre Director	2	1	.	.	2	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
943979	Centrelink	1	5	13	6	Customer Service Officer	5	2	.	.	1	1	1
944082	Blinky Bill Childcare	1	5	15	1	Childcare Centre Director	2	1	20	2	3	1	1
944119	Depart Com,Sport etc	1	5	13	6	Pool Inspector	4	1	.	.	1	1	1
944137	Award Bathroom Concepts	1	5	3	1	Production Supervisor	2	1	120	5	3	1	1
944143	Korowa Girls School	2	5	14	2	Director of Studies	3	2	100	4	2	1	1
944201	LePine Funeral Services	1	5	17	5	Funeral Co-ordinator	3	2	.	.	3	1	1
944224	Levelan Pty Ltd	1	5	11	2	Accountant	1	1	.	.	3	1	2
944238	Capral Aluminium	1	5	3	1	Process Manager	7	1	1,050	8	1	1	1
944298	Cargill Foods	1	5	3	9	Labourer	2	1	1,190	8	1	1	2
944320	WorkCover	1	5	12	3	Welfare Worker	1	1	.	.	1	1	1
944401	Aust Red Cross Blood	1	5	15	2	Medical Scientist	2	1	300	6	1	1	2
944501	Chubb Security	1	5	12	8	Security Guard	4	2	8,354	8	1	1	1
944553	Group 4 Correction	1	5	15	6	Correctional Officer	2	1	.	.	2	2	1
944616	Glen Fulton Motors	1	5	7	5	Sales Manager	3	2	.	.	2	1	1
944636	AB Contract Packing	1	5	9	.		4	2	200	5	2	1	1
944932	Coast Carpentry	1	5	5	4	Apprentice Carpenter	4	1	.	.	3	2	2
944974	Dept of Education	1	5	14	2	Teacher	2	1	.	.	1	1	1
944996	City Rowers Tavern	1	5	8	3	Chef	3	2	.	.	2	1	1
945030	Palm Springs	1	5	3	7	Delivery Person	3	2	50	3	1	1	1
945194	Little Legends Childcare	2	5	15	6	Child Care Worker	4	2	.	.	3	1	1
945208	Carter Holt Harvey	1	5	3	3	Account Manager	2	1	200	5	1	2	1
945221	ATO	1	5	13	5	Tax Officer	1	1	.	.	1	1	1
945240	Cargill Foods	1	5	3	9	Slicer	2	1	1,190	8	1	1	2
945279	Forestry Tasmania	1	5	1	7	Excavator Operator	1	1	600	7	1	1	1
945332	Royal Hotel Randwick	1	5	8	6	Liquor Store Duty Manager	2	1	.	.	3	1	1
945395	Aust Specialty Pet Foods	1	5	3	.		4	2	35	3	2	1	1
945517	Enve Hair & Beauty	2	5	7	4	Hairdresser	2	1	.	.	3	1	2

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
945518	Toyota Motor Corporation	1	5	3	9	Factory Worker	1	1	4,700	8	1	1	2
945528	Malvern Transport	1	5	9	7	Truck Driver	8	2	.	.	3	1	1
945607	ABC	1	5	16	1	Station Manager	6	1	4,298	8	1	1	1
945610	Unimin Australia	1	5	3	3	Site Manager	4	2	800	7	2	2	1
945612	Philip Leong Stores	2	5	7	8	Shop Assistant	3	2	.	.	3	1	1
945645	Collinsville Coal	1	5	3	7	Dump Truck Operator	1	1	5,102	8	1	1	1
945691	Woolworths	1	5	7	8	Shop Assistant	1	1	175,000	9	1	1	1
945987	North Goonyella Coal	1	5	2	7	Miner	7	1	.	.	1	1	1
946017	Depart of Local Gov	1	5	13	1	Manager	2	1	.	.	1	1	2
946041	Sutton Tools	1	5	3	9	Factory Worker	1	1	200	5	1	1	2
946042	Sutton Tools	2	5	3	9	Factory Worker	1	1	200	5	1	1	2
946066	Printco	1	5	12	9	Cleaner	1	1	.	.	3	1	2
946214	Depart Health & Aging	1	5	15	5	Technical clerk	2	1	.	.	1	2	1
946216	Rosedale Leather	1	5	3	9	Labourer	6	1	130	5	3	1	2
946336	Telstra	2	5	10	6	Customer Service Operator	2	1	40,000	9	1	1	1
946381	Defence Maritime Pty	1	5	9	3	Ship Mate	1	1	150	5	1	1	1
946462	National Jet Systems	2	5	9	6	Flight Attendant	2	1	1,000	7	1	1	1
946470	Depart of Education	1	5	14	2	Teacher	2	1	.	.	1	1	2
946616	Trollope Silverwood & Beck	1	5	5	1	Account Manager	6	2	345	6	2	1	1
946693	Trollope Silverwood & Beck	1	5	5	1	Construction Manager	4	2	345	6	2	1	1
946695	Trollope Silverwood & Beck	1	5	5	1	Manager Interior Design	6	2	345	6	2	1	1
946728	Depart Human Services	1	5	15	3	Welfare Worker	1	1	.	.	1	1	1
946735	Trollope Silverwood & Beck	1	5	5	1	Design Manager	4	2	345	6	2	1	1
946838	Melboure Inner City Mgmt	2	5	12	6	Receptionist	4	1	.	.	1	1	2
946839	Lillydale Lodge	2	5	15	6	Residential Care Worker	2	1	.	.	3	1	1
947032	Airstream Cafe	1	5	8	3	Chef	4	2	.	.	2	1	1
947092	Australian Quantantine	2	5	13	5	Quarantine Officer	8	2	.	.	3	2	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
947146	Greg Geddes & Associ	2	5	14	.		4	2	.	.	3	1	1
947175	Depart of Defence	1	5	13	2	Asset Manager	1	1	.	.	1	1	2
947252	Newmont Tanami	2	5	2	5	Secretary	3	1	1,400	8	1	1	2
947281	Guidline (ACT) Pty Ltd	1	5	5	7	Truck Driver	6	1	45	3	3	1	1
947281	Guidline (ACT) Pty Ltd	1	5	5	9	Labourer	6	1	45	3	3	1	1
947281	Guidline (ACT) Pty Ltd	1	5	5	9	Labourer	6	1	45	3	3	1	1
947281	Guidline (ACT) Pty Ltd	1	5	5	9	Labourer	6	1	45	3	3	1	1
947312	Uni of Technology Sydney	2	5	14	5	Secretary	6	1	.	.	1	2	1
947369	Watertech Resources	1	5	4	9	Labourer	1	1	90	4	3	1	1
947415	Czapp Group	1	5	5	7	Roller door installer	4	2	120	5	3	1	1
947427	Michael Hu Real Estate	1	5	12	6	Real Estate Agent	1	1	.	.	3	1	1
947500	Mt Prior Vineyard	1	5	1	9	Farmhand	3	2	.	.	2	1	1
947545	Geelong Advertiser	2	5	16	8	Clerk	4	2	250	6	1	1	1
947551	GVLT Logistics	1	5	9	4	Mechanic	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947551	GVLT Logistics	1	5	9	7	Truck Driver	6	1	60	4	2	1	2
947653	Kangan Batman TAFE	2	5	14	2	Teacher	1	1	.	.	1	2	1
947673	Veneto Social Club	2	5	8	3	Chef	4	2	.	.	2	1	1
948042	Royal Blind Society	1	5	17	2	Accountant	3	2	.	.	2	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
948303	V-B Granite	1	5	5	7	Machine Operator	2	1	.	.	3	1	2
948530	Australian Customs Service	1	5	13	5	Customs Officer	2	1	.	.	1	1	1
948599	St Barbara Mines	1	5	2	4	Boilermaker	2	1	.	.	1	1	2
948693	Australia Post	1	5	10	5	Delivery Manager	2	1	34,900	9	1	1	2
948697	South Coast Medical	1	5	15	3	Welfare Worker	5	2	.	.	2	1	1
948755	MWT Australia	1	5	14	6		4	2	70	4	1	1	1
948853	Lethlain Pty Ltd	2	5	7	6	Salesperson	6	1	.	.	3	1	2
948887	Uni of Western Sydney	1	5	14	2	Lecturer	1	1	.	.	1	1	1
948982	Linfox Armaguard	1	5	11	5	Road Crew Leader	1	1	.	.	1	1	1
949290	FJ Trousers	2	5	3	7	Sewing Machinist	6	1	75	3	3	1	2
949290	FJ Trousers	2	5	3	7	Sewing Machinist	6	1	75	3	3	1	2
949290	FJ Trousers	2	5	3	7	Sewing Machinist	6	1	75	3	3	1	2
949290	FJ Trousers	2	5	3	7	Sewing Machinist	6	1	75	3	3	1	2
949325	E.W. Tipping Foundation	1	5	15	6	Residential Care Worker	4	2	.	.	2	1	1
949346	North Goonyella Coal	1	5	2	.		5	2	.	.	1	1	1
949348	SKM Recycling	1	5	15	9	Picker	4	2	80	4	1	1	1
949420	Garagonoulis	2	5	17	8	Clerk	6	1	2	1	3	1	1
949550	Gulf Bulk Haul	1	5	2	7	Truck Driver	3	2	.	.	2	1	1
949726	Northern Air Charter	1	5	9	2	Pilot	2	1	12	2	3	1	1
949734	T&C Collections	2	5	7	8	Sales Assistant	3	2	.	.	3	1	1
949961	Group 4 Securities	2	5	12	8	Frontdesk Security	1	1	.	.	1	1	1
950093	Budget Glazing	1	5	5	7	Factory Operator	6	1	.	.	1	1	2
950224	Talbot Birner Morley	2	5	12	5	Secretary	3	1	80	4	1	1	2
950280	JoblinkPlus	2	5	12	1	General Manager	1	1	130	5	1	2	1
950349	Pen's Prime People	1	5	12	5	Clerk	4	2	.	.	2	1	1
950447	Egan Central Laundry	2	5	3	3	Factory Supervisor	6	1	.	.	2	1	2
950529	Good N Cheap	2	5	7	3	Shop Manager	2	1	.	.	3	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
950776	Tempo Services	1	5	12	9	Cleaner	6	1	22,000	9	1	1	2
950776	Tempo Services	1	5	12	9	Cleaner	6	1	22,000	9	1	1	2
950776	Tempo Services	1	5	12	9	Cleaner	6	1	22,000	9	1	1	2
950776	Tempo Services	2	5	12	9	Cleaner	6	1	22,000	9	1	1	2
950776	Tempo Services	2	5	12	9	Cleaner	6	1	22,000	9	1	1	2
950786	County Fire Authority	1	5	15	5	Project Officer	1	1	50	3	1	1	2
950942	River Inn Tavern	1	5	8	7	Bar Attendant	2	1	.	.	3	1	2
951058	Fermore Pty Ltd	1	5	9	7	Truck Driver	2	1	.	.	3	1	2
951103	Intercontinental Ship Mgmt	1	5	2	2	Engineer	1	1	160	5	1	1	2
951124	Rail Infrastructure Corp	1	5	9	4	Fettler	1	1	.	.	1	2	1
951195	Westpac Bank	2	5	11	1	Branch Manager	1	1	27,138	9	1	1	1
951247	Shire of Wiluna	1	5	13	7	Grader Operator	2	1	.	.	3	1	2
951322	BMS Entertainment	2	5	16	2	Accountant	3	1	10	1	1	1	2
951395	Vista Blinds	2	5	7	6	Sales Consultant	1	1	.	.	3	1	2
951428	Victoria Hotel	1	5	8	9	Yardman	8	2	.	.	3	1	1
951465	EDS Services	1	5	12	5	Senior Computer Operator	2	1	2,582	8	1	2	2
951478	Frontline Australia	1	5	3	7	Storeperson	1	1	140	5	2	1	1
951522	Printlinx	1	5	12	4	Printing Machinist	2	1	55	4	3	2	2
951556	JDN Monocrane	1	5	3	4	Boilermaker	2	1	.	.	3	1	1
951559	Int. Armed Transport	1	5	12	6	Clerk	4	2	.	.	2	1	1
951567	Mander Dynamics	1	5	5	4	Painter	6	1	16	2	3	2	2
951569	BOC Ltd	1	5	3	7	Plant Operator	1	1	2,300	.	1	2	2
951603	Dajoni Pty Ltd	1	5	7	8	Shop Assistant	4	2	.	.	2	1	1
951659	Newsteele Homes	1	5	5	.		5	2	.	.	3	1	1
951810	ATO	2	5	13	8	File Clerk	2	1	.	.	1	1	2
951840	Mayne Pharma Pty	1	5	3	7	Dispensary Operator	2	1	1,900	8	1	1	1
951944	Brumby's Mitcham	1	5	7	8	Bakery Assistant	1	1	18	2	3	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
951979	LJ Hooker	2	5	12	3	Property Manager	1	1	.	.	3	2	1
952005	Envogue Hair Design	2	5	7	4	Hairdresser	4	1	.	.	3	1	1
952011	Stockmans Australia	2	5	8	3	Cafe Manager	2	1	.	.	3	2	2
952077	Chinese Fellowship of Vic	2	5	14	2	Teacher	4	2	.	.	3	1	1
952091	Centrelink	2	5	13	6	Customer Service Officer	2	1	27,000	9	1	1	1
952132	Commonwealth of Aust	2	5	13	.		5	2	.	.	1	1	1
952197	G James Extrusion	1	5	3	1	Production Supervisor	1	2	530	7	1	1	1
952259	Curraweena Investments	2	5	6	5	Secretary	3	2	2	1	3	1	1
952375	Australia Post	1	5	10	8	Postman	2	1	34,900	9	1	1	1
952415	New Sout Global Pty	1	5	14	3	Marker	4	2	.	.	1	1	1
952454	Independent Distillers	1	5	3	7	Forklift Operator	1	1	180	5	1	1	1
952459	Sita Coaches	1	5	9	7	Bus Driver	3	2	100	4	3	1	1
952575	Demos Property Services	2	5	12	9	Cleaner	1	1	.	.	3	1	2
952618	Orbit Homes	1	5	12	6	Home Consultant	5	2	85	4	3	2	1
952621	Paper Australia	1	5	3	1	Admin Manager	6	1	975	7	1	2	2
952678	Crown Hotel	2	5	8	6	Bar Attendant	4	2	.	.	3	1	1
952694	GlaxoSmithKline	2	5	6	6	Sales Manager	3	2	1,500	8	1	2	1
952744	JH & GT Hillier	1	5	9	7	Truck Driver	1	1	20	2	3	2	1
952785	Woolworths	1	5	7	7	Truck Driver	1	1	175,000	9	1	1	2
952901	Demos Property Services	1	5	12	9	Cleaner	2	1	.	.	3	1	2
952958	AAPT Limited	1	5	10	5	Clerk	5	1	1,500	8	1	1	1
953014	Anthony's Jewellers	1	5	3	4	Gem Setter	2	1	13	2	3	1	1
953028	Coles Myer	1	5	9	9	Cleaner	3	2	89,208	9	1	1	1
953053	ATO	1	5	13	3	Technical Officer	2	1	.	.	1	1	1
953102	Palms Motel	1	5	8	3	Motel Manager	4	2	.	.	2	2	1
953151	SPC Ardmona	1	5	3	9	Packer	4	2	500	7	1	1	1
953160	SPC Ardmona	1	5	3	7	Batch Maker	4	2	500	6	1	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
953288	Yantjarrwu Outstation	1	5	15	4	Mechanic	1	1	.	.	2	1	2
953311	Shire of Dundas	1	5	13	1	Town Works Supervisor	2	1	.	.	3	1	2
953320	Toyota Motor	1	5	3	7	Forklift Operator	7	1	4,700	8	1	1	2
953449	Qantas Flight Catering	1	5	9	9	Catering Assistant	7	1	35,520	9	1	1	1
953619	State Cinema	2	5	16	5	Assistant Manager	3	2	.	.	2	1	1
953705	National Australia Bank	1	5	11	3	Financial Planner	1	1	43,000	9	1	1	1
953735	Sunshine Garden Supplies	1	5	7	7	Truck Driver	1	1	12	2	3	1	2
953742	Greer Industries	1	5	3	9	Blue Collar	7	1	85	4	2	1	2
953816	Aust. Commercial Catering	2	5	9	9	Catering Assistant	1	1	500	6	1	1	2
953830	Combined Cabs Pty Ltd	1	5	9	7	Taxi Driver	4	2	.	.	2	1	1
953884	Withheld	1	5	6	7	Yard Supervisor	1	1	.	.	3	1	1
953913	Showbiz International	1	5	16	5	Box Office Supervisor	4	2	.	.	2	1	1
953918	Jav IT Pty Ltd	2	5	12	6	Finance Clerk	4	2	.	.	2	2	1
953928	PFD Food Services	1	5	6	7	Delivery Driver	1	1	1,300	8	3	1	1
954314	Uni of Sunshine Coast	2	5	14	2	Teacher	4	2	.	.	1	1	1
954330	Charles Darwin Uni	1	5	14	9	Clearner	2	1	.	.	1	1	1
954390	Masterfoods	1	5	3	7	Forklift Operator	1	1	2,003	8	1	2	2
954536	GE Capital Finance	1	5	11	1	Call Centre Manager	3	2	3,381	8	1	2	1
954640	Australia Post	1	5	10	8	Postman	1	1	34,900	9	1	2	1
954650	Mayne Group Ltd	2	5	15	2	Nurse	1	1	.	.	1	1	2
954687	Ready Mix Holdings	1	5	5	9	Labourer	1	1	4,010	8	1	1	2
946907	Australian Nuclear Science	2	6	13	2	Chemist	6	1	.	.	1	1	2
950548	Group 4 Correction	1	6	15	6	Correctional Officer	2	1	.	.	2	1	2
954223	Aust Cable and Telephone	1	6	10	1	Channel Manager	8	1	.	.	3	1	2
954616	TNT	1	6	9	9	Dockhand	1	1	468	6	1	1	1
954764	Victorian Deaf Society	1	6	15	3	Marketing Consultant	4	2	.	.	2	1	1
954780	MaxNetwork Pty Ltd	1	6	12	1	Business Manager	6	1	.	.	1	2	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
954832	Caelli Constructions	1	6	5	9	Labourer	6	1	400	6	2	1	2
954903	Walkabout Leisure	2	6	3	7	Sewing Machnist	5	2	30	3	1	1	1
954947	Anglican Homes	1	6	15	2	Nurse	2	1	1,500	8	1	1	1
955036	Depart of Justice	1	6	13	6	Enquiry Officer	2	1	.	.	1	1	1
955053	ATG Management	1	6	5	9	Labourer	6	1	150	5	3	1	2
955063	Australian Bulk Minerals	1	6	2	7	Truck Driver	1	1	.	.	1	1	1
955157	Kimberly Clark Australia	2	6	3	9	Packer	7	1	1,850	8	1	1	1
955166	Variety Toys	2	6	7	6	Clerk	5	2	.	.	3	1	1
955288	AME Medical	2	6	15	3	Pathology Collector	1	1	5,000	8	1	1	1
955485	Wilson Security	1	6	12	8	Security Guard	3	2	.	.	3	1	1
955485	Wilson Security	1	6	12	8	Security Guard	3	2	.	.	3	1	1
955490	Premium Casing Services	1	6	5	4	Service Technician	1	1	65	4	3	2	2
955532	Sandringham Charter Coaches	2	6	9	.		4	2	.	.	2	1	1
955577	Air Direct Transport	1	6	9	7	Storeperson	2	1	20	2	3	1	1
955598	Kangan Batman TAFE	2	6	14	6	Clerk	2	1	.	.	1	2	1
955605	Subway Winsor	2	6	8	8	Shop Assistant (food ser)	8	2	2	1	2	1	1
955673	Corum Investment (Hotel)	1	6	8	5	Bar Manager	3	2	.	.	3	2	1
955769	AGL Utility Services	1	6	4	2	IT Manager	6	1	402	6	2	1	1
955778	CSR LTD	1	6	5	7	Plant Operator	1	1	4,010	8	1	1	1
955782	Once Pty Ltd	2	6	7	3	Shop Manager	1	1	.	.	3	1	1
955783	Depart of Justice	1	6	13	6	Correctional Officer	1	1	.	.	1	1	2
955790	Rye Pub	2	6	8	6	Waitress	3	2	85	4	2	1	1
955890	Australian Kitchen Industries	1	6	3	7	Production Worker	2	1	335	6	3	1	1
955902	DMB Industries	1	6	3	7	Machinist	1	1	600	7	1	1	1
955914	Aust. Commercial Catering	1	6	16	3	Chef	5	2	500	6	1	1	1
955944	Clive Peeters Pty Ltd	2	6	7	5	Secretary	1	1	900	7	1	1	1
955974	CSR LTD	1	6	5	4	Leading Hand	1	1	4,010	8	1	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
956020	Latrobe Golf Club	1	6	16	9	Cleaner	2	1	25	2	3	1	1
956065	Platnium Healthcare	1	6	15	6	Control Room Duty	1	1	50	3	1	1	2
956094	Amaco Source 1(removalists)	1	6	9	7	Driver/furniture removalist	3	2	.	.	2	1	1
956106	Depart of Attorney General	1	6	13	1	Security Co-ordinator	1	1	.	.	1	2	1
956141	The Commonwealth Club Ltd	1	6	8	5	Bar Manager	1	1	40	4	3	2	1
956181	Inglewood Shire Council	2	6	13	.		4	2	.	.	2	1	1
956296	Abigroup Leighton Joint Venture	1	6	5	7	Plant Operator	7	1	2,500	8	1	1	1
956348	University of New England	1	6	14	1	Project Manager	4	2	.	.	1	1	1
956377	Mobil Refinery	1	6	3	3	Control Specialist	1	1	625	7	1	1	1
956442	Forgacs Engineering	1	6	5	4	Tradesperson	4	2	469	6	2	1	1
956451	ATO	1	6	13	5	Clerk	3	2	.	.	1	1	1
956704	Multi-Group Express	1	6	9	7	Truck Driver	1	1	2,000	8	1	1	1
956752	Mariah Hovercraft	1	6	3	4	Boat Builder	2	1	5	1	3	1	2
956774	Power Lab Pty Ltd	2	6	12	6	Clerk	6	1	7	1	3	1	2
956780	Reneetov Skin Care	2	6	3	9	Factory Worker	6	1	.	.	2	1	2
956780	Reneetov Skin Care	2	6	3	9	Factory Worker	6	1	.	.	2	1	2
956792	Western Access Pty	1	6	9	7	Truck Driver	4	2	.	.	2	1	1
957076	O'Brien Glass	1	6	7	4	Glazier	3	2	943	7	1	1	1
957079	Carter Holt Harvey Wood Products	2	6	3	7	Production Worker	1	1	.	.	1	1	2
957112	Hardys (Legal firm)	2	6	12	2	Solicitor	8	2	.	.	1	1	1
957122	Town of Vincent	1	6	13	6	Pool lifeguard	1	1	.	.	1	1	1
957172	Neills On Central	1	6	8	3	Chef	5	2	.	.	3	1	1
957185	Australian Meat Holdings	1	6	3	9	Labourer	1	1	4,800	8	1	1	1
957191	Statewide Autistic	1	6	15	6	Instructor	1	1	.	.	2	2	1
957459	Unilever Australasia	1	6	3	9	Factory worker	3	1	2,040	8	1	1	1
957481	Grand Theatre Co	2	6	16	8	Cinema Theatre Casual	4	2	200	5	2	1	1
957500	Murray Goulburn Co-op	1	6	3	4	Printer	1	1	2,200	8	1	1	2

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
957549	Dynamo Lounge Pty Ltd	1	6	8	3	Chef	2	1	.	.	2	1	1
957560	Sleepmaster Pty Ltd	1	6	3	.		5	2	90	4	2	1	1
957565	Woolworths Limited	1	6	7	7	Forklift Driver	1	1	175,000	9	1	2	1
957584	Coles Myer	1	6	7	7	Storeperson	1	1	89,208	9	1	1	2
957589	Curtain University of Technology	1	6	14	2	Lecturer	4	2	.	.	1	1	1
957716	Australia Post	1	6	10	7	Parcel Deliverer	4	2	34,900	9	1	1	1
957865	Purity Property Services	1	6	12	9	Cleaner	4	2	.	.	3	2	1
957993	Copper Refineries Pty Ltd	1	6	3	7	Machinist	2	1	180	6	1	1	1
958078	Coles Supermarkets	2	6	7	8	Shop Assistant	1	1	59,000	9	1	1	2
958116	Australia Bureau Statistics	1	6	13	2	IT Assistant Director	1	1	350	6	1	1	2
958116	Pirelli Power Cables & Systems	1	6	12	.		1	1	.	.	1	1	1
958152	Velvet Paints	1	6	5	4	Painter	4	2	.	.	2	1	1
958276	Mission Australia	1	6	12	3	Trainer	2	1	2,800	8	1	1	1
958368	Chiquita Mushrooms	2	6	1	9	Pickers	6	1	120	5	1	1	2
958368	Chiquita Mushrooms	2	6	1	9	Pickers	6	1	120	5	1	1	2
958368	Chiquita Mushrooms	2	6	1	9	Pickers	6	1	120	5	1	1	2
958368	Chiquita Mushrooms	2	6	1	9	Pickers	6	1	120	5	1	1	2
958576	Woolworths	1	6	7	4	Butcher	2	1	175,000	9	2	2	2
958594	Mesh & Bar Pty Ltd	1	6	3	7	Machinist	2	1	.	.	3	1	1
958619	Univeristy of Tasmania	1	6	14	2	Lecturer	2	1	.	.	1	1	1
958682	Kalgoorlie Gold Mines	2	6	2	7	Truck Driver	7	1	530	7	1	1	1
958686	Toll Shipping	1	6	9	7	Chief Steward	8	2	15,000	9	1	1	1
958691	Groote Eylandt Mining	1	6	2	7	Truck Driver	5	2	220	6	1	1	1
958747	Ken Muston Automotive	2	6	7	6	Sales Representative	6	1	6	1	3	1	1
958772	Dina Rodrigues (Hair Salon)	2	6	7	4	Hairdresser	3	2	.	.	3	1	1
958811	Rio Tinto	1	6	2	7	Machinist	1	1	108	5	1	1	1
958849	Telstra	1	6	10	1	Bid Manager	2	1	40,000	9	1	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
958873	Kirwan Cleaning	1	6	12	9	Cleaner	6	1	.	.	3	1	1
958992	McKinnons Decorative Finishers	1	6	5	4	Painter	6	1	25	2	3	1	1
959051	Australian Hearing	1	6	15	3	Technical Officer	1	1	840	7	1	1	1
959064	Charles Stuart University	1	6	14	5	Graduations Officer	1	1	.	.	1	2	1
959326	Brazilian Butterfly (Beauty salon)	2	6	17	8	Receptionist	2	1	.	.	3	1	2
959495	Malvern Transport	1	6	9	.		4	2	.	.	2	1	1
959592	Maddens Lawyers	1	6	12	2	Solicitor	2	1	.	.	2	1	1
959597	Macquarie University	2	6	14	2	Teacher	4	2	.	.	1	2	1
959880	Hawker De Havilland	1	6	9	4	Machinist	6	1	900	7	1	1	2
959994	State Rail Authority of NSW	1	6	9	1	Duty Manager	1	1	.	.	1	2	1
960084	Jabiru Town Council	1	6	13	1	Manager	2	1	.	.	2	2	1
960159	Barefore Marine	1	6	12	8	Security Guard	1	1	.	.	3	2	2
960296	Chubb Security	1	6	12	8	Security Guard	1	1	8,354	8	1	1	1
960304	Pogue Vineyard	2	6	1	9	Vineyard Hand	2	1	.	.	3	1	1
960408	Melbourne Pathology	2	6	15	2	Medical Scientist	7	1	900	7	1	1	2
960422	Sky City Darwin	1	6	16	6	Dealer	2	1	420	6	1	1	1
960431	Visy Paper	1	6	3	7	Factory Worker	1	1	171	5	1	2	1
960625	Refined Sugar Services	1	6	3	3	Technical Officer	6	1	4,010	8	1	1	1
960646	Aristocrat Technologies	1	6	3	4	Electroplater	1	1	1,300	8	1	2	1
961030	HRF Constructions	1	6	5	7	Truck Driver	4	2	.	.	3	1	1
961067	Baker's Delight Broadmeadows	2	6	7	4	Baker	8	2	.	.	3	1	1
961262	Secure Parking Financial Services	1	6	9	7	Bus Driver	1	1	500	7	1	1	1
961271	SPC Ardmona	1	6	3	7	Batch Maker	2	1	500	6	1	1	2
961549	Rock Posters	1	6	12	6	Bill Posterer	1	1	14	2	3	2	1
961595	Elaeno Nominees (pharmacy)	2	6	7	6	Pharmacy Assistant	2	1	.	.	3	1	2
961602	Munni Laundry	2	6	3	.		3	1	35	3	3	1	2
961786	Inghams	1	6	3	9	Factory Worker	2	1	.	.	1	1	1

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
961879	Nyangatjatjara Corporation	1	6	15	3	Senior House Parent	4	2	.	.	3	1	1
962010	Regency (Stegbar)	1	6	7	4	Installer	4	2	1,276	8	1	1	1
962022	Telstra	1	6	10	4	Technician	6	1	40,000	9	1	1	1
962169	Telstra	1	6	10	6	Sales Assistant	8	2	40,000	9	1	1	1
962238	Boncel	1	6	3	4	Electrician	1	1	.	.	3	1	2
962367	GSL Custodial (Prison industry)	1	6	15	9	Labourer	8	2	550	7	2	2	1
962390	Carramar Lighting	1	6	7	.		8	1	16	2	3	1	1
962407	Hillcrest College	1	6	14	3	Equestrian Instructor	4	2	80	4	2	1	1
962420	EDI Rail Pty Ltd	1	6	3	4	Welder	6	1	15,000	9	1	1	2
962420	EDI Rail Pty Ltd	1	6	3	4	Welder	6	1	15,000	9	1	1	2
962420	EDI Rail Pty Ltd	1	6	3	4	Welder	6	1	15,000	9	1	1	2
962420	EDI Rail Pty Ltd	1	6	3	4	Welder	6	1	15,000	9	1	1	2
962420	EDI Rail Pty Ltd	1	6	3	4	Welder	6	1	15,000	9	1	1	2
962469	Depart of Human Services	1	6	15	1	Risk Manager	1	1	.	.	1	1	1
962546	Vitasoy Australia Products	2	6	3	3	Laboratory Technician	7	1	40	3	3	2	1
962799	The Manor House	1	6	8	.		2	1	.	.	3	1	2
963106	Guardian Hall	1	6	8	3	Restaurant manager	3	1	.	.	3	1	2
963166	Supreme Outdoor Solutions	2	6	7	.		6	1	.	.	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	2	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	1	6	3	9	Laundry Worker	6	1	35	3	3	1	2

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
963179	Munni Laundry	1	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	1	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963179	Munni Laundry	1	6	3	9	Laundry Worker	6	1	35	3	3	1	2
963416	Depart of Human Services	1	6	15	3	Welfare Worker	1	1	.	.	1	1	1
963731	GrainCorp	1	6	6	6	Grain Handler	1	1	939	7	1	1	2
963749	Eucalypt Software	2	6	6	2	IT Professional	3	2	11	2	3	2	1
963850	Tetra Pak Manufacturing	1	6	3	4	Electrician	1	1	180	5	1	1	1
963921	Australian Dairy Farmers	1	6	6	7	Machine Operator	1	1	2,209	8	1	1	2
963979	Monash University	1	6	14	2	Lecturer	4	2	.	.	1	2	1
964032	Polyfoam Australia	2	6	3	7	Production Worker	6	1	100	5	1	1	2
964046	Hammock Enterprises (Subway)	1	6	8	5	Compliance Officer	2	1	.	.	2	1	1
964052	Australia Post	1	6	10	6	Business Sales Consultant	3	2	34,900	9	1	1	1
964108	TNT Australia	2	6	9	6	Customer Service Officer	2	1	4,648	8	1	1	1
964165	State Transit	1	6	9	7	Busdriver	1	1	4,101	8	1	2	1
964175	All Systems Techology	1	6	7	4	Technician	2	1	7	1	3	1	1
964240	Taltarni Vineyards	1	6	8	8	Cafe & Cellar Sales	4	2	.	.	2	1	1
964597	Carey Baptist Grammar	2	6	14	2	Teacher	7	1	.	.	1	2	2
964606	TEC Imports	1	6	7	3	Shop Manager	2	1	.	.	3	1	2
965113	Cordite Engineering	1	6	3	.		2	1	10	1	3	1	2
965161	Qantas	1	6	9	6	Flight Attendant	1	1	38,000	9	1	2	1
965228	Permewans (Hair Salon)	1	6	7	4	Hairdresser	4	2	55	4	3	1	1
965235	EDG Entertainment	2	6	8	6	Bar Attendant	1	1	.	.	1	1	1
965547	Nestle	2	6	3	7	Machine Operator	4	2	4,300	8	1	1	1
965758	Star Track Express	1	6	9	7	Truck Driver	1	1	2,000	8	1	2	1
966105	SBS	2	6	16	3	Producer/Subtitler	6	1	900	7	1	1	1
966106	University of Ballarat	1	6	14	2	Senior Lecturer	5	2	.	.	1	1	1
966379	Landmark Operations Ltd	2	6	12	2	Accountant	2	1	2,500	8	1	1	2

Case No.	Employer	Gender	Year	Industry	Skill Level	Job Title	Reason	Jurisdiction	Staff Count	Bus. Size	HR Expert	Arbitrator Gender	Outcome
966476	Fyna Foods	2	6	3	7	Machine Operator	1	1	.	.	3	1	1
966524	Medicare	1	6	13	.		3	1	.	.	1	1	1
966741	Archdiocesan Services	1	6	17	.		5	2	.	.	2	1	1
966822	Brumbys Bakery	1	6	7	4	Baker	3	2	.	.	3	2	1
966832	Flinders University	1	6	14	2	Lecturer	2	1	4,017	8	1	1	1
966862	City of Melbourne Council	2	6	13	5	Finance Officer	1	1	1,105	8	1	1	2
967040	Astor Hotel	1	6	8	8	Security Guard	2	1	.	.	3	1	1
967109	Centrelink	1	6	13	6	Customer Service Officer	5	2	27,000	9	1	1	1